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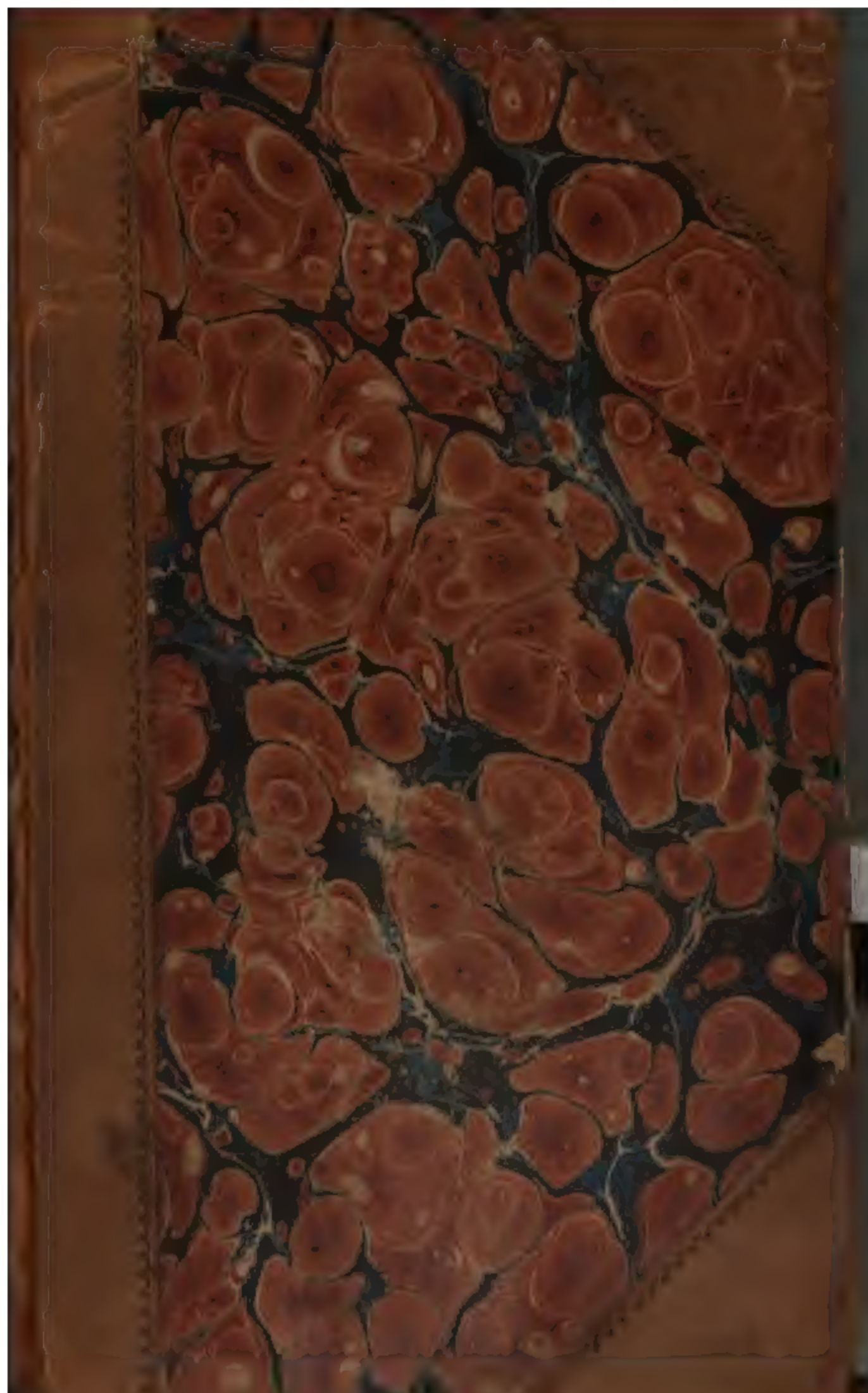
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THE  
RAILWAY CLAUSES,  
COMPANIES' CLAUSES, AND LANDS' CLAUSES  
**Consolidation Acts,**  
WITH NOTES.

TOGETHER WITH  
**AN APPENDIX.**

TREATING OF THE FORMATION OF A RAILWAY COMPANY,  
THE MODE OF PASSING A BILL THROUGH  
PARLIAMENT, &c.

AND  
*An Addenda of Statutes and Forms.*

---

BY R. P. COLLIER.  
OF THE INNER TEMPLE, ESQ., BARRISTER AT LAW.

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*THE SECOND EDITION,*  
CONTAINING THE MOST RECENT DECISIONS, AND THE STATUTES PASSED IN  
THE SESSION 9 & 10 VICTORIA.

BY H. T. J. MACNAMARA.  
OF LINCOLN'S-INN, ESQ., SPECIAL PLEADER.

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## PREFACE TO THE FIRST EDITION.

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THE following pages are intended to contain all the Statutes, the Standing Orders and *lex non-scripta* of Parliament, and decisions of Courts of Law and Equity, which it is requisite that a Railway Company should be acquainted with, in order to understand the necessary steps to obtaining the powers they require from Parliament, and their rights, duties, and liabilities, both before and after those powers have been obtained.

It has not been thought necessary to refer to every case in which the word railway occurs: many such have been decided on general principles, without reference to any circumstances peculiar to Railway Companies, others on provisions in particular acts not likely to be found elsewhere, or on difficulties which the Legislature has taken care to remove.

Every case, however, which has been decided on sections identical with, or similar to those in the Consolidation Acts, or which seems to throw light upon the probable construction or enforcement of their provisions, has been referred to in the notes to those acts: other cases illustrating the rights and liabilities of Railway Companies during, and after their formation, will be found in the Appendix.

*Inner Temple,*

*August, 1845.*

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## PREFACE TO THE SECOND EDITION.

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THE public having required a second edition of this work, I have undertaken it, at the request of Mr. Collier, whose other engagements prevented him from devoting the time and attention necessary for the collection of statutes, cases, and standing orders, which have accumulated since the first edition.

I have endeavoured to render this edition as complete as possible, and, I believe, it will be found to contain all the important decisions, Statutes, and Parliamentary resolutions relating to Railways to the end of the year of 1846.

HENRY MACNAMARA.

*Inner Temple, December, 1846.*



## TABLE OF CASES.

---

	PAGE
Agar <i>v.</i> The Regent's Canal Company .....	13, 22, 23
Aldred <i>v.</i> The North Midland Railway .....	8, 53
Aldridge <i>v.</i> The Great Western Railway Company .....	29
Amies <i>v.</i> Stevens .....	84
Armitage <i>v.</i> The Grand Junction Railway Company .....	84
Aston <i>v.</i> Weaver .....	87
Attorney-General <i>v.</i> The Manchester and Leeds Railway Company .....	12, 22
The same <i>v.</i> Cleaver .....	22
The same <i>v.</i> The Eastern Counties Railway Company, and The Northern and Eastern Railway Company .....	26
The same <i>v.</i> The Eastern Counties Railway Company .....	26
The same <i>v.</i> The London and Southampton Railway Com- pany .....	53
Aylesbury Railway Company <i>v.</i> Thompson .....	130
The same <i>v.</i> Mount .....	130, 136

### B.

Banks <i>v.</i> Goode .....	App. 12
Barnsley Canal Company <i>v.</i> Twibell .....	80
Barnard <i>v.</i> Hamilton .....	128
Bartlett <i>v.</i> Lambert .....	App. 12
Beckett <i>v.</i> Bradley .....	Add. cxxxv.
Bell <i>v.</i> Francis .....	App. 11
The same <i>v.</i> The Hull and Selby Railway Company .....	7, 62
Birmingham Canal Company <i>v.</i> Lloyd .....	22
Birmingham and Aylesbury Railway Company <i>v.</i> Thompson	136, 140
Birmingham, Bristol, and Thames Junction Railway Com- pany <i>v.</i> Freeman .....	140
The same <i>v.</i> White .....	140, 174
The same <i>v.</i> Graham .....	140
The same <i>v.</i> Gavestone .....	ib.
The same <i>v.</i> Locke .....	ib.
Birkett <i>v.</i> Willan .....	84
Bishop <i>v.</i> North .....	77
Blakemore <i>v.</i> The Glamorganshire Canal Company	7, 13, 20, 22, 23



Blundell <i>v.</i> Winsor .....	123
Bolton <i>v.</i> Puller .....	145
Bovile <i>v.</i> Hammond.....	App. 12
Bourne <i>v.</i> Freeth .....	App. 7
Bower <i>v.</i> Hill .....	63
Boyd <i>v.</i> Croydon Railway Company .....	24, 83
Bradley <i>v.</i> Eyre .....	145
Bradley <i>v.</i> Holdsworth .....	127
Bridge <i>v.</i> Grand Junction Railway Company .....	84
Brierly <i>v.</i> Cripps.....	App. 12
Brook <i>v.</i> Pickwick .....	84
Butterfield <i>v.</i> Forester .....	84

## C.

Carpue <i>v.</i> The London and Brighton Railway Company	83, 87. Add. cxxiv.
Chalk <i>v.</i> Wyatt.....	22
Cheltenham and Great Western Union Railway Company <i>v.</i> Fry .....	136
Cheltenham Railway Company <i>v.</i> Price .....	140
Child <i>v.</i> Hudson Bay Company .....	177
Clarke <i>v.</i> Imperial Gas Light and Coke Company .....	177
Clarence Railway Company <i>v.</i> The Great North of England, Clarence, and Hartlepool Junction Railway Com- pany.....	13, 56, 204
Clowes <i>v.</i> Brettell.....	145
Constables, &c., of Chorlton <i>v.</i> Walker .....	63
Coates <i>v.</i> Clarence Railway Company .....	22, 27
Coggs <i>v.</i> Bernard.....	85
Collinson <i>v.</i> The Newcastle and Darlington Railway Company	63, 112
Corrigal <i>v.</i> London and Blackwall Railway Company	19, 214, 218, 219
Cory <i>v.</i> The Norwich and Yarmouth Railway Company.....	22
Cumming <i>v.</i> Prescott .....	162

## D.

Daly <i>v.</i> Thompson.....	App. 9, 14, 124
Dand <i>v.</i> Kingscote .....	63, 78
Davies <i>v.</i> Garrett.....	84
Davis <i>v.</i> The London and Blackwall Railway Company .....	30
Dawes <i>v.</i> Peck .....	85
Dewers <i>v.</i> Pike. . . . .	169
Devereux <i>v.</i> Barclay .....	85
Dickenson <i>v.</i> Valpy .....	App. 12
Dobson <i>v.</i> Jones .....	63

# TABLE OF CASES.

ix

Doe d. Hutchinson v. The Manchester, Bury, and Rosendale Railway Company .....	239
Doe dem. Payne v. The Bristol and Exeter Railway Company.....	20, 219, 238
——Myatt v. The St. Helen's and Runcorn Gap Railway Company .....	146
Doe v. The London and Croydon Railway Company .....	207
Doyle v. Muntz.....	App. 12
Drew v. The New River Company .....	34
Duncuft v. Albrecht .....	127
Dundalk Railway Company v. Tapster .....	136
Dunstan and Others v. The Imperial Gas Company.....	177
Dudley Canal Navigation Company v. Crazebrook .....	80
Dutton v Solomonson .....	85
Duvergier v. Fellowes .....	App. 8, 123

## E.

Eardley v. Law.....	145
Eastern Counties Railway Company v. Cooke .....	138
Edgar v. Knapp .....	App. 12
Edinburgh and Leith Railway Company v. Hebblewhite .....	137, 139
Edwards v. The Grand Junction Railway Company .....	8
Edwards v. Sherratt.....	87
Ellison v. Bignold.....	124
<i>Ex parte</i> Althorpe .....	244
Farlow .....	269, 270
Gardner .....	233
Gorling .....	270
Grange .....	242
Hill .....	270
Iraushand.....	231, 240, 243
Lord Palmerston .....	245
Madon .....	245
Marshall .....	244
Molyneux.....	244
Newton .....	233
Northwick .....	233
Parkes .....	25
Robins .....	25
Shaw.....	233
Tetley .....	245

## F.

Fisher v. Aide .....	add. cxxxv.
Foss v. Harbottle .....	154, 159

<b>Fox v. Clifton</b> .....	App. 7
<b>— v. Smith and Another</b> .....	169
<b>Fyler v. Fyler</b> .....	131

## G.

<b>Garrard v. Hardy</b> .....	124
<b>Garside v. The Proprietors of the Trent and Mersey Navigation</b> .....	86
<b>Gilbert v. Cooper</b> .....	165
<b>Goddard v. Hodges</b> .....	App. 12
<b>Golden v. Manning</b> .....	84
<b>Grantham Canal Company v. Hall</b> .....	90
<b>Gray v. Chaplin</b> .....	12
<b>Greenhalgh v. The Manchester and Birmingham Railway Company</b> .....	11
<b>Great North of England Railway Company v. Biddulph</b> .....	136
<b>Grand Junction Railway Company v. White</b> .....	75

## H.

<b>Hancock v. Hodgson</b> .....	169
<b>Hare v. Waring</b> .....	128
<b>Hargreaves v. The Lancaster and Preston Junction Railway Company</b> .....	9
<b>Harrison v. Heathorne</b> .....	App. 11, 121
<b>Harvey v. Collett</b> .....	123
<b>Harvey v. Kay</b> .....	App. 12
<b>Hawken v. Bourne</b> .....	App. 12
<b>Hebblewhite v. M'Morine</b> .....	127
<b>Hewitt v. Price</b> .....	127
<b>Holmes v. Higgins</b> .....	App. 12
<b>Homfray v. Jones</b> .....	77
<b>Howden, Lord v. Simpson</b> .....	10
<b>Humble v. Mitchell</b> .....	123, 127
<b>— v. Langston</b> .....	127
<b>Hyde v. The Trent and Mersey Navigation Company</b> .....	86
<b>— v. The Great Western Railway Company</b> .....	232

## I.

<b>Illingworth v. The Manchester and Leeds Railway Company</b> .....	12, 28
<b>Innocent v. The North Midland Company</b> .....	44

## J

<b>Jackson v. Roker</b> .....	123, 127
<b>— v. Rogers</b> .....	84

# TABLE OF CASES.

xi

Jones <i>v.</i> The Royal Canal Company .....	12
Jones <i>v.</i> The Great Western Railway Company .....	232
Joseph <i>v.</i> Pebrer .....	123

## K

Kemp <i>v.</i> The London and Brighton Railway Company 7, 49, 61, 69	
The same <i>v.</i> The Brighton Railway Company .....	22
Kennet and Avon Canal Company <i>v.</i> the Great Western Railway Company .....	87
Kempson <i>v.</i> Saunders .....	App. 12
Kerr <i>v.</i> Willan .....	84
Kerridge <i>v.</i> Hepe .....	App. 11
Kingworth <i>v.</i> The Manchester and Leeds Railway Company	22
Kingslynn <i>v.</i> Pemberton .....	23
King <i>v.</i> Pease .....	28

## L

Lambert <i>v.</i> Knill .....	App. 12
Lancaster Canal Navigation Company <i>v.</i> Parnaby and others	83
Langford <i>v.</i> Brighton, Lewes, and Hastings Railway Company	247
Law <i>v.</i> Wilson .....	App. 12
Lawton <i>v.</i> Hickman .....	Add. xviii. cxxxv. App. 7
Lee <i>v.</i> Milner .....	13, 20, 22, 23
Lewis <i>v.</i> Billing .....	App. 12
London and Birmingham Railway Company <i>v.</i> The Grand Junction Canal Company .....	26
London and Brighton Railway Company <i>v.</i> Cooper .....	27
The same <i>v.</i> Blake and others .....	62
The same <i>v.</i> Fairclough .....	127, 129, 139
The same <i>v.</i> Wilson .....	137
London Grand Junction Railway Company <i>v.</i> Freeman	App. 9, 124, 140
The same <i>v.</i> Graham .....	140
The same <i>v.</i> Gunston .....	140
London and Greenwich Railway Company <i>v.</i> Goodchild .....	274
Loonie <i>v.</i> Oldfield .....	Add. cxxxv.
Lovett <i>v.</i> Hobbs .....	84

## M

M'Intosh <i>v.</i> The Midland Counties Railway Company .....	App. 12
Manchester and Leeds Railway Company <i>v.</i> The Queen .....	54
Manning <i>v.</i> The Eastern Counties Railway Company .....	75, 223
Manser <i>v.</i> The Northern and Eastern Counties Railway Company .....	27
Mayhew <i>v.</i> James .....	84

Mayhew <i>v.</i> Nelson.....	85
Meigh <i>v.</i> Clinton .....	App. 7
Midland Counties Railway Company <i>v.</i> Oswin .....	200
Milburn <i>v.</i> Codd .....	App. 12
Middleton <i>v.</i> Fowler .....	84
Moneypenny <i>v.</i> Hartland.....	App. 11
Monmouthshire Canal Company <i>v.</i> Summers Hartford .....	75
Monkland Railway Company <i>v.</i> Dixon .....	77
Muschamp <i>v.</i> Lancaster and Preston Junction Railway Company .....	87

## N

Nockels <i>v.</i> Crosby.....	124.	App. 7, 12
Northern Bridge Roads Company <i>v.</i> The London and Southampton Railway Company .....		51
North Union Railway Company <i>v.</i> The Bolton and Preston Railway Company .....		22
Norwich and Lowestoft Navigation Company <i>v.</i> Theobald...		137

## O.

Oatey <i>v.</i> Bourne .....	App. 12
Oliver <i>v.</i> Latham .....	63
O'Neil <i>v.</i> Brindle .....	Add. cxxxv.
Owen <i>v.</i> Burnett... ..	84, 85

## P.

Palmer <i>v.</i> The Grand Junction Railway Company .....	83, 87
Parker <i>v.</i> The Great Western Railway Company .....	7, 83
Parsons <i>v.</i> Spooner .....	App. 12
Parkyn <i>v.</i> Fry .....	App. 12
Pearson <i>v.</i> Skelton .....	App. 12
Perkins <i>v.</i> Pritchard.....	146
Perring <i>v.</i> Hone .....	App. 12
Petre, Lord <i>v.</i> The Eastern Counties Railway Company .....	10
Phelps <i>v.</i> Lyle .....	162
Phene <i>v.</i> Gillon .....	127
Phillipson <i>v.</i> the Earl of Egremont.....	145
Pickford <i>v.</i> The Grand Junction Railway Company .....	87, 91. Add. cxxxv.
Piggot <i>v.</i> The Eastern Counties Railway Company .....	30
Preston <i>v.</i> The Grand Collier Dock Company .....	130, 142, 159
Priestley <i>v.</i> Foulds .....	7
——— <i>v.</i> The Manchester and Leeds Railway Company...	27

## R.

Ransford <i>v.</i> Bosanquet.....	145
-----------------------------------	-----



# TABLE OF CASES.

xiii

Ray v. Hirst .....	Add. cxxxv
Re Dilworth .....	123
Re The Rector of Lambeth .....	236
Reg. v. The London and South Western Railway Company .....	277
Reg. v. Victoria Park Company .....	134
Reg. v. The Grand Junction Railway Company .....	278
Reg. v. The Great Western Railway Company .....	279
Reg. v. The Norwich and Brandon Railway Company .....	25
Reg. v. The Blackwall Railway Company .....	25
Reg. v. The York and North Midland Railway Company ...	72, 75
Reg. v. The Lancaster and Preston Railway Company .....	221
Reg. v. The Eastern Counties Railway Company ...	25, 54, 223, 231
Reg. v. The Severn and Wye Railway Company .....	25
Reg. v. The Manchester and Leeds Railway Company .....	25, 54. 69, 219
Reg. v. The Birmingham and Gloucester Railway Company .....	24, 25, 56, 57, 70, 83
Reg. v. The Bristol Dock Company .....	25
Reg. v. The Bristol and Exeter Railway Company .....	25
Reg. v. The London and Southampton Railway Company ...	230, 70
Reg. v. The Hull and Selby Railway Company .....	25
Reg. v. The Deptford Pier Company .....	25, 239
Reg. v. The North Union Railway Company .....	25, 231
Reg. v. The North Midland Railway Company .....	25, 28, 30, 231
Reg. v. Scott and others .....	30, 58, 69
Reg. v. Selby and Leeds Railway Company .....	80, 231
Reg. v. The Sheriff of Middlesex .....	224
Reg. v. The Leicestershire and Northampton Union Canal Company .....	90
Rex v. Brecknock and Abergavenny Canal Company ...	12, 25, 213
Rex v. Cumberworth .....	13
Rex v. The Glamorganshire Canal Company .....	90
Rex v. The Commissioners for improving the Market House, Manchester .....	207
Rex v. The Trustees of the Norwich and Watton Road .....	218, 219
Rex v. Nottingham Old Water Works Company .....	219
Rex v. Mayor, Bailiffs &c., of Bristol .....	219
Rex v. Bagshaw .....	219
Rex v. Justices of the City of York .....	223
Rex v. Gardner .....	224
Rex v. Justices of the West Riding of Yorkshire .....	231
Rex v. Liverpool and Manchester Railway Company .....	270
Rex v. Wilts and Berks Canal Company .....	25
Rex v. Pease .....	29, 67
Rex v. Morris .....	77
Rex v. Meredith .....	85
Rex v. The Glamorganshire Canal Company .....	90
Rex v. Hungerford Market Company .....	30
Rex v. Sheriff of Warwickshire .....	224

Rich <i>v.</i> Kneeland .....	84
Rigby <i>v.</i> The Great Western Railway Company,.....	22, Add. cxxxv.
Riley <i>v.</i> Horne .....	84
Ripon, Earl of <i>v.</i> Hobart.....	22
River Dun Navigation Company <i>v.</i> North Midland Railway Company .....	22
Robertson <i>v.</i> Great Western Railway Company .....	232

## S.

Sadler <i>v.</i> Nixon .....	App. 12
Salmon <i>v.</i> Randal .....	13, 223
Semple <i>v.</i> The London and Birmingham Railway Company	22, 29
Shaw <i>v.</i> Holland .....	Add. iii. cxxxv
Sheffield, Ashton-under-line, and Manchester Railway Company <i>v.</i> Woodcock .....	125, 127, 134, 161
Sheffield Canal Company <i>v.</i> Sheffield and Rotheram Railway Company .....	168
Sheridan <i>v.</i> Whittington .....	App. 12
Sims <i>v.</i> The Commercial Railway Company .....	205
Sirhowy Tram Road Company <i>v.</i> Jones .....	77
Smith <i>v.</i> Newcomb .....	App. 12
Smith <i>v.</i> Shaw .....	30, 280
Smith <i>v.</i> Goldsworthy .....	177
Society of Practical Science <i>v.</i> Abbott .....	177
South Eastern Railway Company <i>v.</i> Hebblewhite.....	137
Same <i>v.</i> Fairclough .....	139
Southampton Dock Company <i>v.</i> Richards .....	135, 136, 139, 140
The same <i>v.</i> Arnett .....	135, 139
Spencer <i>v.</i> The London and Birmingham Railway Company	22, 59
Stanley <i>v.</i> The Chester and Birkenhead Railway Company ...	11
Steadman <i>v.</i> Arden .....	141
Steinberger <i>v.</i> Carr .....	App. 12
Stephens <i>v.</i> De Medina .....	128
Stephenson <i>v.</i> Hart .....	85
Stewart <i>v.</i> Cauty .....	128
Stone <i>v.</i> The Commercial Railway Company .....	204, 207, 214, 219
Storer <i>v.</i> The Great Western Railway Company .....	75
Stourbridge Canal Company <i>v.</i> Wheeley .....	7, 90

## T.

Taylor <i>v.</i> Clemson .....	7, 20, 214, 220, 233, 252
Tempest <i>v.</i> Kilner.....	Add. cxxxv
Thames Haven Railway Company <i>v.</i> Hall .....	136, 169
Thames Haven and Dock Railway Company <i>v.</i> Rose .....	168
Thickness <i>v.</i> The Lancaster Canal Company .....	24, 63, 231
Tichburn <i>v.</i> White .....	84
Tower <i>v.</i> The Eastern Counties Railway Company .....	44
Trent Navigation <i>v.</i> Wood .....	86

# TABLE OF CASES.

xv

Turner <i>v.</i> The Sheffield and Rotherham Railway Company...	32
Tyler <i>v.</i> Morrice .....	84
Tyrrell <i>v.</i> Woolley .....	169

## W.

Wainwright <i>v.</i> Ramsden .....	271
Walker <i>v.</i> The London and Blackwall Railway Company ...	204 213
Walstab <i>v.</i> Spottiswoode .....	App. 12, Add. cxxxv
Walworth <i>v.</i> Holt .....	169
Warburton <i>v.</i> London and Blackwall Railway Company.....	28, 30
Ware <i>v.</i> Grand Junction Waterworks Company .....	22
Watkins <i>v.</i> Huntley .....	App. 12
Webb <i>v.</i> Manchester and Leeds Railway Company .....	743, 69
Webb <i>v.</i> Watts.....	App. 12
West London Railway Company <i>v.</i> Bernard.....	140, Add. cxxiv
Wilson <i>v.</i> Cutting .....	App. 12
Wilson <i>v.</i> Watts .....	App. 12
—— <i>v.</i> Wilson.....	162
Wingfield <i>v.</i> Barton.....	145
—— <i>v.</i> Peel .....	145
Wood <i>v.</i> The Duke of Argyle .....	App. 7
Wolseley, <i>v.</i> Cox .....	127
Wonter <i>v.</i> Sharp .....	App. 12
Wyrly Canal Company <i>v.</i> Bradley and others .....	79

## Y.

York and North Midland Railway Company <i>v.</i> the Queen ...	72
Young <i>v.</i> Smith.....	App. 6, Add. cxxxv

## TABLE OF STATUTES.

---

**8 Vict. cap. 20.**

An act for consolidating in one act certain provisions usually inserted in acts authorizing the making of railways ... p. 1—119

**8 Vict. cap. 16.**

An act for consolidating in one act certain provisions usually inserted in acts with respect to the constitution of companies incorporated for carrying on undertakings of a public nature,  
p. 119—194

**8 Vict. cap. 18.**

An act for consolidating in one act certain provisions usually inserted in acts authorizing the taking of lands for undertakings of a public nature ..... p. 194—288

**7 & 8 Vict. cap. 110.**

An act for the registration, incorporation and regulation of joint stock companies..... Add. i—xcix

**1 Vict. cap. 83.**

An act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament.....Add. xlix—li

**1 & 2 Vict. cap. 98.**

An act to provide for the conveyance of the mails by railways,  
Add. lii—lx

**1 & 2 Vict. cap. 117.**

An act to provide for the custody of certain monies paid by subscribers to works to be effected under the authority of parliament ..... Add. lx—lxiii

**9 Vict. cap. 20.**

An act to amend 1 & 2 Vict. c. 117, for providing for the custody of certain monies paid in pursuance of the standing orders of either house of parliament, by subscribers to works or undertakings to be effected under the authority of parliament .....Add. lxiv—lxvii

**2 & 3 Vict. cap. 45.**

An act to amend 5 & 6 William IV. c. 50, relating to highways,  
Add. lxvii—lxix

3 & 4 Vict. cap. 97.

An act for regulating railways..... Add. lxix—lxxv

5 & 6 Vict. cap. 55.

An act for the better regulation of railways, and for the conveyance of troops ..... Add. lxxvi—lxxxv

7 & 8 Vict. cap. 85.

An act to attach certain conditions to the construction of future railways, and for other purposes in relation to railways,

Add. lxxxv—xcvii

8 & 9 Vict. cap. 96.

An act to restrict the powers of selling or leasing railways contained in certain acts of parliament relating to such railways,

Add. xcvii

9 & 10 Vict. cap. 28.

An act to facilitate the dissolution of certain railway companies,

Add. xcvi—ci

9 & 10 Vict. cap. 105.

An act for constituting commissioners of railways, Add. cix—cxii

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Since the printing of the body of this edition, the Court of Exchequer has given judgment in two cases (*Reynell v. Lewis*, and *Wyld v. Hopkins*, Nov. 25, 1846, 10 *Jurist*, 972), (*a*) which relate to the liability of provisional committee-men for preliminary expenses of a railway. The result of these decisions is that the relation of co-provisional committee-men creates neither a partnership, nor a quasi partnership, so as to render one, as a matter of law, liable for the acts of the others. The liability of a provisional committee-man is to be determined by the rules of law affecting the relation of principal and agent.

The standing orders as altered for the session of 1847 will be found to extend from p. 36 to p. 66 in the Appendix. Some of the former standing orders had been printed in this edition before the later orders had appeared in print. It was thought advisable to give the new orders in a complete form, and this has led to some repetition of the former orders; but no difficulty will occur in this respect, if it be remembered that all the orders, with the latest alterations, are given between p. 36 and p. 66 in the Appendix.

The references in the Index to the Orders are made to those which apply to the session of 1847.

(*a*) These judgments are most ably and fully reported in the *Jurist*, by W. M. Best, Esq., Barrister-at-Law.

THE  
LAW OF RAILWAYS,  
§c. §c.

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8 VICT. CAP. 20.

*An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the making of Railways.*

[8th May, 1845.]

WHEREAS it is expedient to comprise in one general act sundry provisions usually introduced into acts of Parliament authorizing the construction of railways, and that, as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves : And whereas a bill is now pending in Parliament, intituled, *An Act for consolidating in one Act certain provisions usually inserted in acts authorizing the taking of lands for undertakings of a public nature*, and which is intended to be called "The Lands Clauses Consolidation Act, 1845 :"  
May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and com-

Operation  
of this act  
confined to  
future rail-  
ways.

mons in this present Parliament assembled, and by the authority of the same, That this act shall apply to every railway which shall by any act which shall hereafter be passed be authorized to be constructed, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act, which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

Interpreta-  
tions in this  
act:

And with respect to the construction of this act and of other acts to be incorporated therewith, be it enacted as follows :

“ special  
act :”

II. The expression “ the special act,” used in this act, shall be construed to mean any act which shall be hereafter passed, authorizing the construction of a railway, and with which this act shall be so incorporated as aforesaid; and the word “ prescribed,” used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur, shall be construed as if, instead of the word “ prescribed,” the expression “ prescribed for that purpose in the special act” had been used; and the expression “ the lands” shall mean the lands which shall by the special act be authorized to be taken or used for the purposes thereof; and the expression “ the undertaking” shall mean the railway and works, of whatever description, by the special act authorized to be executed.

“ prescribed:  
ed :”

“ the  
lands :”

“ the under-  
taking.”

Interpreta-  
tions in this  
and the spe-  
cial act :

III. The following words and expressions, both in this and the special act, shall have the meanings hereby assigned to them, unless there be something



in the subject or context repugnant to such construction ; (that is to say,)

Words importing the singular number only shall **Number :**  
include the plural number ; and words importing  
the plural number only shall include also the  
singular number :

Words importing the masculine gender only shall **Gender :**  
include females :

The word "lands" shall include messuages, lands, "**Lands :**"  
tenements, and hereditaments of any tenure :

The word "lease" shall include an agreement for "**Lease :**"  
a lease :

The word "toll" shall include any rate or charge "**Toll :**"  
or other payment payable under the special  
act for any passenger, animal, carriage, goods,  
merchandize, articles, matters, or things con-  
veyed on the railway :

The word "goods" shall include things of every "**Goods :**"  
kind conveyed upon the railway :

The word "month" shall mean calendar month : "**Month :**"

The expression "superior courts" shall mean her "**Superior**  
Majesty's superior courts of record at West- **Courts :**"  
minster or Dublin, as the case may require :

The word "oath" shall include affirmation in the "**Oath :**"  
case of Quakers, or other declaration lawfully  
substituted for an oath in the case of any other  
persons exempted by law from the necessity of  
taking an oath :

The word "county" shall include any riding or "**County :**"  
other like division of a county, and shall also  
include county of a city or county of a town :

The word "Sheriff" shall include under sheriff or "**the she-**  
other legally competent deputy ; and where any **riff :**"  
matter in relation to any lands is required to  
be done by any sheriff or clerk of the peace, the  
expression "the sheriff," or the expression "the  
clerk of the peace," shall in such case be con- "**the clerk**  
strued to mean the sheriff or the clerk of the **of the**  
peace of the county, city, borough, liberty, **peace :**"  
cinque port, or place where such lands shall

be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

“ Justice . ”

The word “ justice ” shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorized or required to be done by two justices, the expression “ two justices ” shall be understood to mean two justices assembled and acting together :

“ Two justices : ”

Where under the provisions of this or the special act any notice shall be required to be given to the owners of any lands, or where an act shall be authorized or required to be done with the consent of any such owner, the word “ owner ” shall be understood to mean any person or corporation who, under the provisions of this or the special act, or any act incorporated therewith, would be enabled to sell and convey lands to the company :

“ Owner : ”

“ the company : ”

The expression “ the company ” shall mean the company or party which shall be authorized by the special act to construct the railway :

“ the railway : ”

The expression “ the railway ” shall mean the

railway and works by the special act authorized to be constructed :

The expression " the Board of Trade " shall mean " Board of the lords of the committee of her Majesty's Trade . " privy council appointed for trade and foreign plantations :

The expression " the Bank " shall mean the Bank " the of England, where the same shall relate to Bank " monies to be paid or deposited in respect of lands situate in England ; and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland :

The expression " turnpike road " shall, when " Turnpike applied to any road in Ireland, include any road road," Ire- upon which her Majesty's mails are or shall be land carried in mail carriages ; or such other roads as the commissioners of public works in Ireland shall consider to require arches of greater width or height than by this act is required for public carriage roads :

The expression " surveyor," applied to a road or " Sur- highway, shall, as to railways in Ireland, include veyor," Ire- the county surveyor : land

The expression " overseers of the poor," when " Overseers applied to Ireland, shall include the poor law of the poor," Ireland. guardians of the electoral division and the clerk of the guardians of the union through which such railway may pass.

IV. And be it enacted, That in citing this act in Short title other acts of Parliament, and in legal instruments, of the act. it shall be sufficient to use the expression " The Railways Clauses Consolidation Act, 1845."

V. And whereas it may be convenient, in some Form in cases, to incorporate with acts hereafter to be passed which por- tions of this act may be some portion only of the provisions of this Act ; be incorporated in other acts. it therefore enacted, That for the purpose of making any such incorporation, it shall be sufficient in any

such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act, in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

*Construction of  
Railway*

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And with respect to the construction of the railway and the works connected therewith, be it enacted as follows :

The construction of the railway to be subject to the provisions of this act and the lands clauses consolidation act.

VI. In exercising the power given to the company (a) by the special act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions (b) contained in this act and in the said Lands' Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damages sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands' Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned act shall be applicable to determining

ount of any such compensation, and to entitle the payment or other satisfaction thereof.

*In exercising the powers given to the Company, &c.]* powers conferred on Railway Companies, being unknown to common law, and indeed repugnant to its spirit, the exercise of them is watched with some jealousy by the Courts, who are inclined to construe acts of Parliament against the command in favour of those whose rights they seek to interfere. In *Webb v. The Manchester and Leeds Railway Company*, 1 Myl. and Cr. 116, Lord Cottenham uses this language: "The powers of Railway Companies are so large—it may be said to be for the benefit of the public—but they are so large and injurious to the interests of individuals, that I think it is the duty of every Court to keep them most strictly within those limits, and if there be any reasonable doubt as to the extent of the powers, they must go elsewhere and get enlarged powers, and will get none from me by way of construction of their powers by Parliament." See the judgment of Tindal, C. J., in *Wright v. Clewson* (in error), 2 Q. B. 978; *Kemp v. The Great Northern Railway Company*, 1, Railway Cases, 637; *Bell v. The Hull and Selby Railway Company*, 1 Railway Cases, 616. An act of Parliament, conferring certain unusual powers, is more regarded by the Courts in the light of an instrument containing the terms of a contract entered into by the obtainers of the powers for the benefit of the public, in construing which the ordinary rule will be applied, which interprets contracts against the contracting party. See *Blackmore v. The Glamorganshire Canal Company*, 1 K. 154. *The Stourbridge Canal Company v. Wheeley*, 1 Ad. 792; *Priestley v. Foulds*, 2 Railway Cases, 441. The language of the act is supposed to be the language of the promoters of it, who ask the Legislature to give them certain privileges, and profess to give the public certain advantages in return. *Parker v. The Great Western Railway Company*, 1 Law Journ. 1844, C. P. 105; 3 Railway Cases, 563, at the time the Courts will take care that this leaning which they profess to have towards the public against railway companies shall not be made an instrument of extortion by individuals. See *Bell v. The Hull and Selby Railway Company*, 1 Railway Cases, 616.

*Subject to the provisions and restrictions in this act, and the Lands Clauses Consolidation Act.]*—In addition to the powers and restrictions here mentioned, others may be conferred by agreement before the act of Parliament is obtained. It seems the proper place to discuss briefly the effect of such powers as to control the powers expressly conferred upon the Companies by the Legislature.

Trustees of a road which was to be crossed by the Grand Northern Railway withdrew their opposition to the bill when

pending in Parliament, on an agreement being entered into with them by the agent or manager of the company that the substance of certain clauses, compelling the company, among other things, to make a bridge fifty feet wide over the road, which it was the object of the trustees to insert in the bill, should be embodied in a deed of covenant to be executed by the company when incorporated. The act enabled them to cross the road by means of a bridge of fifteen feet wide. It was held by the Vice Chancellor and by the Lord Chancellor, affirming his Honour's decision, that the incorporated company were bound by the acts of their agent before incorporation, and could not, as against the trustees, exercise a power conferred by the act, in violation of the terms of the agreement, and an injunction was granted restraining them from making a bridge of less width than fifty feet. *Edwards and Others v. Grand Junction Railway Company*, 1, Railway Cases, 173. *Quere*—Whether a Court of common law would have considered them so bound by the act of their agent?

The act of Parliament, however, cannot be controlled except by express agreement.

The trustees of a turnpike assented to the passing of the bill for the formation of the North Midland Railway, on condition that the railway should pass over the road at a sufficient elevation, and the road be not lowered or otherwise prejudiced. This qualified assent was returned to both Houses of Parliament—the bill passed. The 12th section of the act, among other powers, authorized the complainants to raise or sink rivers or streams, roads or ways, in order the more conveniently to carry them over or under, or by the side of the railway, with certain provisos relative to streams. The 72nd section enacted, that the arch of any bridge for carrying the railway over or across a turnpike road, should be of a height from the surface of such road to the centre of such arch of at least sixteen feet, provided that the descent under any such bridge should not exceed one foot in thirty feet. It was held by the Vice Chancellor that the modified assent of the road trustees, the terms of which were neither embodied in any agreement between the trustees and the company, nor adopted by the Legislature, afforded no equitable ground for restraining the company from enforcing, with regard to the road in question, all the powers conferred by the act. *Aldred v. The North Midland Railway Company*, 1, Railway Cases, 404. So where, in consequence of some communication which passed between the plaintiff and the agent of the company, the plaintiff understanding that the railway would not pass through a certain part of his field and plantation, and that his field would not be taken for a terminus station, took no immediate steps for opposing the bill; but, subsequently, in the absence of the plaintiff from England, his agent, in answer to a notice served on the plaintiff's land

, requiring the whole of the field for the purposes of way, returned a written dissent to the bill, and the f was treated as a dissenting landowner throughout the s of the bill. The act having passed, the company, in rcise of the powers thereby conferred, required of the f the whole of his field and plantation. It was held, by e Chancellor, that inasmuch as the plaintiff in the com- tion between him and the company's agent did not pre- himself from opposing the bill; and as he was, by the is agent, treated as a dissentient landowner, the com- vere not bound by any representation made by their for which they had received no consideration. *Har- v. The Lancaster and Preston Junction Railway Com- .*, Railway Cases, 416.

agreement with a peer, or a member of the House of ons, the consideration of which is that his vote shall be or or against a bill, is illegal and void; but it is com- for a peer or member of Parliament to enter into an ent for withdrawing his opposition as a landowner to a r bill.

agreement was made under seal between Lord Howden e projectors of the York and North Midland Railway ny; to the effect that a company had been formed for g a railway, that defendants were proprietors, that a bill en introduced into Parliament, according to which the ould pass through plaintiff's estates and near his mansion, at he was a dissentient, and opposed the passing of the hat defendants had proposed that if he would withdraw position, and assent to the railway, they would endeavour ate from the proposed line; and plaintiff agreed that, on ion of the stipulations in the agreement being performed, thereby withdraw his opposition and give his consent; e defendants covenanted that in case the then bill should sed in the then session, they would in six months after it d the royal assent, pay plaintiff 5000*l.* as compensation : damage his residence and estates would sustain from lway passing according to the deviated line, exclusive of, thout prejudice to, such further compensation, for any e, as in the agreement after mentioned. The plaintiff d in debt, and averred that he withdrew his opposition bill, which passed into a law in the then session, that six s had elapsed, but that defendants had not paid the 5000*l.* defendants pleaded that the railway at the time of making eement, and according to the act, was intended to pass h lands of divers individuals; that the agreement was privately and secretly by the parties thereto, without the t or knowledge of the said individuals, and was con- from them continually until the act was passed, and ot disclosed to, or known in Parliament, and was con-

cealed from the Legislature during the passing of the act, and that plaintiff at the time of passing the act and still was a peer of Parliament. On demurrer the plea was held to be good by the Court of Queen's Bench, as shewing that the contract was a fraud on the Legislature. This judgment however was reversed in the Exchequer Chamber, on the ground that no intention of concealment appeared. Both the Court of Queen's Bench and the Exchequer Chamber were of opinion that no fraud on the other landowners was to be presumed from such contract, even, it seems, if it had been purposely concealed from them. And that the mere fact of the plaintiff being a peer was no defence to the action. With reference to the last point, Tindal, C. J., said "the objection is that the deed was illegal, as it places the private interest and the public duty of the plaintiff as a peer of Parliament, in opposition to each other. We can have no hesitation in saying, that if it were averred in the plea, and proved, that 5000*l.* or any part of it, was really paid as a consideration for Lord Howden's giving his vote for, or withholding his vote against, the bill, and that the statement in the deed was in this respect a mere colour to conceal the real nature of the transaction, the deed would have been thereby rendered corrupt and illegal, and consequently void; and that no action would lie for any part of the money. But illegality is not to be presumed; it is to be alleged and proved when it does not appear in the instrument itself. Though Lord Howden was a peer, that would not affect his right to make any bargain for the sale of his land, or for a compensation for an injury to it; if it did, a peer or member of Parliament would be placed in a worse condition than a private individual." *Lord Howden v. Simpson*, 10 A. & E. 793, (this case has been since confirmed in error by the House of Lords,) see *Lord Petre v. Eastern Counties Railway Company*, 1 Railway Cases, 462; 3 *Id.* 367.

If a railway company agree with a landowner to pay a certain price for his land in consideration of the withdrawal of his opposition, they are bound to pay it, even if the line which they finally adopt passes through no part of his land. *Ibid.*

The following cases will illustrate the extent to which a company succeeding another company is bound by its agreements.

Sir Thomas Stanley had withdrawn his opposition to the Chester and Birkenhead Railway in consideration of an agreement to purchase a certain portion of his land for a certain price. The promoters of a competing railway company, who also proposed to pass through his lands, to which he was likewise opposed, petitioned for a bill, and under the sanction of a committee of the House of Commons, the merits of the respective lines were referred to arbitration on the two companies agreeing that the successful company should adopt the engagements of the rejected, to



which arrangement Sir Thomas Stanley, by his agent, assented. The award of the arbitrators being in favour of the second company, their bill passed: It was held by the Vice Chancellor and the Lord Chancellor that the plaintiff having, on the faith of the agreement between the two companies, offered no opposition to the passing of the act, the second company, (although the lands which they required were situated on a different part of Sir Thomas Stanley's estate) as the condition of entering on any part of his lands, were bound by the terms of the agreement between him and the first company. *Stanley v. The Chester and Birkenhead Railway Company*, 1 Railway Cases, 58: 3 Myl. & Cr. 773; 9 Sim. 264. In a case however where two lines of railway had been projected, the first designed to pass through the centre of the plaintiff's lands, the second through only a small portion at one extremity. The projectors of the first line agreed to purchase a certain portion of the plaintiff's land at a fixed price, and thereupon he agreed to assent to their proposed act, and he was accordingly returned as an assenting party. The same agreement provided, that by giving notice to the plaintiff the projectors might vacate the agreement if they did not carry out their act. The projectors of the second line declined entering into a similar agreement with the plaintiff, and to their proposed act they alleged that he declared himself and was returned neutral, but the plaintiff alleged that he dissented therefrom in writing. By an arrangement between the two sets of projectors, made at the recommendation of a committee of the House of Commons, an act was passed incorporating the projectors of the two lines into one company for making a railway, which adopted, as far as the lands of the plaintiff were affected, the line designed by the second set of projectors. The plaintiff alleged that in the list of landowners accompanying the consolidated bill, he was returned as assenting, and the company alleged that he was returned as neutral. The projectors of the first line gave a notice to the plaintiff determining the agreement. The consolidated company having given a notice to the plaintiff for treating for the portion of his land required for the railway, the plaintiff applied for and obtained an *ex parte* injunction, on affidavits, among other things, declaring that he had always insisted on his rights against the company. The company on the other hand filed affidavits to shew that the plaintiff had waived any rights he might have against the company by his conduct. The Vice Chancellor dissolved the injunction, on the ground that the line sanctioned by Parliament materially differed in extent and direction from that contemplated by the projectors of the first line, and the act applied for by them did not in fact pass, and because the projectors of that line having dissolved the agreement by the notice, the plaintiff was not entitled to enforce the contract against the consolidated company.

On appeal, it was held by the Lord Chancellor, that whatever might be the equity of the plaintiff's case with regard to the enforcement of his contract against the company, the plaintiff after being as he stated well aware of his alleged right, had by his conduct in leading the company to believe that he had no intention to claim a performance of the agreement against them, deprived himself of any right to the injunction. *Greenhalgh v. The Manchester and Birmingham Railway Company*, 1 Railway Cases, 68 ; 3 Myl. & Cr. 784 ; 9 Sim. 416.

This decision of the Lord Chancellor will call the attention of parties seeking to enforce rights against Railway Companies, to the caution necessary to avoid any semblance of acquiescence in their proceedings. It should be mentioned, that before a mandamus or injunction (as the case may be) can be obtained, it is necessary that notice should have been given to the company to do the thing required, or forbear the thing complained of, and that a refusal on their part should appear, either positive or presumable, from their acts or delay, with the exception, perhaps, of some extreme cases, in which an injunction might be granted to restrain them from doing irreparable mischief. See *Jones v. Royal Canal Company*, 2 Moll. 319 ; *Gray v. Chaplin*, 2 Russ. 126 ; *Illingworth v. The Manchester and Leeds Railway Company*, 2 Railway Cases, 187 ; *Rex v. Brecknock and Abergavenny Canal Company*, 3 A. & E. 217 ; and note to clause 16, *infra*.

An undertaking, however, entered into with the court of Chancery, will not, it seems, operate to control the provisions of an act of Parliament ; nor will a company be restrained from petitioning Parliament for any bill, although such petition may be a breach of good faith with the Court of Chancery. A Railway Company, as the terms of being permitted to proceed with certain works, pending a trial at law of the question, whether such works were in conformity with the directions of the act of Parliament, undertook to deal with the works as the Court should afterwards direct. Before the trial had taken place, the company, without notice to the other parties in the cause, petitioned the House of Commons for leave to bring in a bill, one of the clauses of which proposed to provide, that in all proceedings at law or in equity, the works which had been done should be considered as a compliance with the act of Parliament, and that there should be no power at law or in equity to compel the removal thereof. The petition was received, and the bill containing such clause was introduced into the House of Commons. It was held by the Lord Chancellor, that although the conduct of the company was a violation of the undertaking entered into by them, the Court had no jurisdiction to restrain them from further soliciting the bill, which, having been entertained by the House of Commons, had become the proceeding of the Legislature, and not of the petitioners. *At-*

*torney-General v. The Manchester and Leeds Railway Company*, 1 Railway Cases, 436.

It seems that a company will not be restrained from carrying on their railway according to the plan laid down in their act, although a junction contemplated in procuring such act, may be frustrated by the abandonment of the line with which it was the original intention of the company to unite. *Clarence Railway Company v. The Great North of England, Clarence, and Hartlepool Junction Railway Company*, 2 Railway Cases, 763; 3 *Id.* 426.

A company is bound not merely to keep within, but to exercise the powers given them, and if their conduct be such as to lead to the inference that they do not intend to complete their works, or to a reasonable doubt on the subject, the Court of Queen's Bench will issue a mandamus, compelling them to do so. Thus, where a company, who had obtained an act for making a railway from London to Norwich, had only purchased lands, and commenced works on a part of the line (from London to Chelmsford,) and it appeared doubtful, from circumstances stated on affidavit, whether they intended to proceed further than Chelmsford, a mandamus was issued, calling upon them to complete the whole line, to set out any proposed deviations from the original line, and to proceed to purchase lands on the remainder of the line (from Chelmsford to Norwich,) pursuant to the provisions of the act. This mandamus, however, was afterwards held to be insufficient, because it contained no express averments that the company had abandoned their design, and were not proceeding with all convenient speed, or that a reasonable time had elapsed without proper preparations, and that deviations would be expedient; 10 A. & E. 531. See *Rex v. Cumberworth*, 3 B. & Ad. 108.

Mandamus is generally the only mode of compelling a company to do the things enjoined in their act, the jurisdiction of equity being ordinarily confined to their transgressions, and at most extending only to the indirect compulsion of restraining them from doing certain things until they have done other things, or from doing things in any other than one way. It may be questioned whether, if it were clearly shown to the Court of Chancery that a company could not raise sufficient funds to complete their undertaking, an injunction would be granted, restraining them from taking lands or prosecuting their works at all, or any further. *Agar v. The Regent's Canal Company*, Cooper's Reports, 77; *Blakemore v. The Glamorganshire Canal Company*, 1 Myl. & Keen, 154; *Salmon v. Randall*, 3 Myl. & Cr. 445, and note to sec. 16; or whether, if it appeared, for example, that they intended to make their terminus short of the distance, at some obscure village, the Court of Chancery would interfere. See judgment of Baron Alderson, in *Lee v. Milner*, 3 You. & Coll. 611, and note to clause 16.

Errors and omissions in plans to be corrected.

VII. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special act, or in the schedule to the special act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, mis-statement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate (a).

(a) If the company take or injure any lands not included in their schedule, or certified to have been omitted by mistake, it seems the owner of them has generally his option of coming in under the compensation clauses, or bringing his action. See note to clause 16.

Works not to be proceeded with until plans of all alterations authorized by Parliament

VIII. It shall not be lawful (a) for the company to proceed in the execution of the railway unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such

alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorized to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

(a) *It shall not be lawful, &c.*] As to the remedies against companies for their unlawful proceedings, where no special remedy is given by the act, see note to clause 16.

As to the necessary particulars of the original plan and section, see Appendix.

IX. The said clerks of the peace, parish clerks, and postmasters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled *An Act to compel Clerks of the Peace for counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament* (a).

Clerks of the peace, &c., to receive plans of alterations, and allow inspection.

7 W. 4, &  
1 Vict.  
c. 83.

(a) See this act, *post*, Addenda.

X. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace

Copies of plans, &c., to be evidence.

shall give to all parties interested, when required shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Limiting  
deviation  
from datum  
line de-  
scribed on  
sections, &c.

XI. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by Parliament and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioner having the control of such street or public highway or, if there be no such trustees or commissioners without the like consent of two or more justices of the peace in Petty Sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas works, or waterworks affected by such deviation: provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of Parliament be left for roads, streets, or canal passing under the same: Provided also, that notice of every Petty Sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such Petty Sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made

Proviso.

Proviso.

or, if there be no church, some other place to which notices are usually affixed.

XII. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation ; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made ; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade ; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the Company to make such deviation, except in conformity with such certificate (a).

Public notice to be given previous to making greater deviations.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

(a) As the Board of Trade are not bound to entertain the application, and have no power to enforce their certificate, probably the power of applying to them here given, would not be considered such a remedy as to disentitle a party to a mandamus, compelling the company to execute their works according to their act.

To compel a company to execute their works according to the certificate of the Board of Trade a mandamus should be applied for. See notes to clauses 6 and 16.

Arches,  
tunnels, &c.  
to be made  
as marked  
on deposit-  
ed plans.

XIII. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Limiting  
deviations  
from gra-  
dients,  
curves, &c.

XIV. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions; (that is to say,)

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade.



XV. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special act provided for in cases of unintentional errors in the said books of reference (a). Lateral deviations.

(a) If the company deviate beyond the prescribed limits, or enter upon the land of any person not included in the books of reference, or omitted by mistake, without his consent in writing, they are liable to an action of trespass; nor can they protect themselves by summoning a jury to assess the value of such land, even where the act directs that the "inquisition" shall be "final and conclusive." In such a case, the Court of Queen's Bench will not quash the inquisition; but the plea, which must necessarily set it out, would be bad. See *Reg. v. Bristol and Exeter Railway Company*, 2 Railway Cases, 99; or an action of debt upon it, which it is now decided may be brought, on records of quarter sessions (see Lands' Clauses Act, s. 50, which makes inquisitions records of quarter sessions), would not be sustainable. *Corrigal v. London and Blackwall Railway Company*, 5 M. & Gr. 219; 6 Scott's N. R. 241; Law J. 1843; C. P. 209; 3 Railway Cases, 411.

The special act fixes the width of the line of railway (generally at twenty two or twenty-three yards,) beyond which land shall not be taken, except in places required for embankments, cuttings, stations, &c. It has been held, that the deviation to the extent of 100 yards, applies only to the line of railway under ordinary circumstances, and the necessary embankments, cuttings, &c. may extend further—in short, that the deviated line has all the incidental rights of the original line. The 100 yards is to be measured from the centre of the ordi-

nary breadth of the original line (not necessarily the breadth between the rails,) and the centre of the ordinary breadth of the deviated line. *Doe dem. Payne v. The Bristol and Exeter Railway Company*, 6 M. & W. 320.

The Manchester and Leeds Railway Act prescribed the general line of railway: and afterwards (sec. 59) enacted, that the railway, in crossing the lands of the Bishop of Bristol and Joseph Livesey, "shall pass between certain new laid out streets there, called Allen Street and Charles Street, so as to leave a space of twenty-four yards, at least, between the said railway and one of the said streets: or otherwise, in case there shall not be a space of twenty-four yards between the said railway and either or both of the said streets, called Allen Street and Charles Street, the said company shall, if required, purchase such space or spaces as shall be less than twenty-four yards, and also one-half of Allen Street or Charles Street, or both, as the case may be.

The company had bought the whole of Allen Street, and carried the railway over it (without deviating from the line first prescribed). This was held to be a compliance with section 59. *Taylor v. Clemson*, 2 Q. B. 978; 3 Railway Cases, 65.

As to the parties who have a right to complain of a deviation, see *Lee v. Milner*; *Blakemore v. Glamorganshire Canal Company*, referred to in note to clause 16.

Works to be executed.

XVI. Subject to the provisions and restrictions in this and the special act (a), and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Inclined planes, &c.

They may make or construct, in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters (b), within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper;

Alteration of course of rivers, &c.

They may alter the course of any rivers (c) not navigable, brooks, streams, or watercourses, and

of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper ;

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway ;

Drains, &c.

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper ;

Ware-houses, &c.

They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead ; and

Alterations and repairs.

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the Railway ;

General power.

Provided always, that in the exercise of the powers by this or the special act granted, the company shall do as little damage as can be (d), and shall make full satisfaction in manner herein and in the special act, and any act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.

Proviso as to damages.

(a) *Subject to the provisions and restrictions of this and the special act.*] If the company in the erection of their works, or in any of their operations, transgress such provisions and restrictions, the party aggrieved has his remedies against them at law and equity. To select the proper or best remedy may, however, be often a matter of considerable difficulty. If any

proceeding of the company affecting the property of a complaining party be manifestly unauthorized by their act, the Court of Chancery will interfere by injunction, and indeed cannot refuse to do so, without reference to the nature or amount of the damage done. *River Dun Navigation Company v. North Midland Railway Company*, 1 Railway Cases, 143; *Ware v. Grand Junction Water Works Company*, 2 Russ. & M. 483. On the other hand, where a proceeding, the lawfulness of which is questionable, tends to create an unquestionable and irreparable mischief, the Court of Chancery will interfere by injunction, prohibitory or mandatory, as the circumstances of the case may require, *Coatts v. Clarence Railway Company*, 1 Russ. & M. 181; in some cases directing an issue at law, and meanwhile staying proceedings, *Agar v. Regent's Canal Company*, Cooper, 77, and imposing certain terms upon the company. *Cory v. Norwich and Yarmouth Railway Company*, 3 Hare, 593; 3 Railway Cases, 524. *Kemp v. Brighton Railway Company*, 1 Railway Cases, 495. In ordinary cases, however, where there is any question as to the construction of an act of Parliament, or the facts deposed to are conflicting, it will not interfere unless good reason be shewn why the complaining party had not proceeded at common law. *Semple v. The London and Birmingham Railway Company*, 1 Railway Cases, 120. *The North Union Railway Company v. The Bolton and Preston Railway Company*, 3 Railway Cases, 345, for the jurisdiction of the Court of Chancery is not an original one, but exists for the purpose of protecting a legal right, (see judgment of the Lord Chancellor in the last case quoted), and after trial had, will, if necessary, interfere for that purpose. See judgment of Lord Eldon, in *Attorney-General v. Cleaver*, 18 Ves. 211, and *Birmingham Canal Company v. Lloyd*; judgment of Lord Brougham in the *Earl of Ripon v. Hobart*, 3 Myl. & K. 169; *Chalk v. Wyatt*, 3 Mer. 683; *Attorney-General v. Manchester and Leeds Railway Company*, 1 Railway Cases, 436. See a case where a company entered into a covenant to stop at a certain station for the purposes of refreshment for the passengers. *Rigby v. the Great Western Railway Company*, 15 L. J., N.S. Canc. 266; 10 Jurist, 531; 4 Railway Cases, 175, 190.

The party seeking the interference of the Court of Chancery, must, in all cases, shew that the illegal act complained of is one which immediately injures him; and that as an individual, and not merely as one of the public. *Kingworth v. The Manchester and Leeds Railway Company*, 2 Railway Cases, 187; *Spenser v. The London and Birmingham Railway Company*, 1 Railway Cases, 159; *Semple v. London and Birmingham Railway Company*, Id.: 208, 480; it is not enough for a landowner to show that the company have made a certain variation in their line which they were not authorized to do by their act

of Parliament, if he be neither directly nor indirectly affected thereby: although if such variation caused the railway to enter his land at any other point than it otherwise would have done, or injuriously affected him in any other way, he would be entitled to relief. *Blakemore v. The Glamorganshire Canal Navigation Company*, 1 Myl. & Keen, 154; *Lee v. Milner*, 2 Young & Coll. 611. In this latter case, Baron Alderson said, "Each landowner has a right to have the powers strictly and literally carried into effect, as regards his own land, and has a right also to require that no variation shall be made to his prejudice in the carrying into effect the bargain between the undertakers and any one else. This I conceive to be the real view taken of the law by Lord Eldon, in the case of *Blakemore v. The Glamorganshire Canal Company*. In that case, that learned judge says, 'It may be of little consequence to A. B. whether the canal is brought to his lands through the land of C. D., or E. F.; but if the Legislature has said it shall be brought through the lands of E. F., the Court of Chancery would enjoin them from bringing it through the lands of C. D.'" But this expression, I apprehend, means this, that only those lands of A. B., which the Legislature has given them authority to take, viz., those adjoining the lands of E. F. shall be taken. This is, therefore, but the first branch of the proposition which I have stated; that the power given by the Parliament as regards the lands of A. B., shall be strictly and literally performed. But Lord Eldon went further in that case, and directed issues to be tried. Those issues afford a proof of the second branch of my proposition. They were whether the works done below and out of the plaintiff's lands would injure Mr. Blakemore's works."

Whether or not it is competent for a landowner to obtain an injunction restraining a company from purchasing his land, on the ground that they have not, and are not able to raise, sufficient funds to carry out their undertaking, seems a matter of some doubt. *Agar v. The Regent's Canal Company*, (above cited); *Kings Lynn v. Pemberton*, Swanst. 244, and *Lee v. Milner*, 2 Young and Coll. 611, seem authorities for the affirmative of this proposition. *Salmon v. Randal*, 3 Myl. and Cr. for the negative. In *Kings Lynn v. Pemberton*, Lord Eldon said, "In the case of *Agar* and the Regent's Canal Company, I acted on the principle, that where persons assume to satisfy the Legislature, that a certain sum is sufficient for the completion of a proposed undertaking, and the event is that the sum is not nearly sufficient, if the owner of an estate through which the Legislature has given to the speculators a right to carry the canal, can show that the persons so authorized are unable to complete their works, and is prompt in his application for relief, grounded on that fact, this Court will not permit the further prosecution of the undertaking." In

*Lee v. Milner*, Baron Alderson said, he fully acceded to this view; "for," he added, "to take any man's land where the whole work can never be performed, is clearly injurious to him, and a substantial breach of the condition on which the Legislature granted the right to it." In the case of *Salmon v. Randall*, the Vice Chancellor granted an injunction on the strength of the above cases, which was dissolved by Lord Cottenham, who limited the above-quoted expressions of Lord Eldon to a narrower signification than they bear *prima facie*. He said, "It is impossible to suppose that Lord Eldon could have meant that, after an act of Parliament had been passed giving certain powers, and authorizing a body of persons to carry on certain works, those against whose rights such works are to be carried into effect, are to come into this Court and say, 'We will undertake to prove that you cannot, with the money you have in hand, carry these works into effect,' and that therefore, and immediately, in that state of circumstances, the Court is to interfere. If that were so, it is quite obvious that not a single bill passes the Legislature, authorizing the formation of a railway or canal, but would be brought immediately into this Court: thus making it the duty of the Court to investigate the probable expense of the speculation; and if it appeared that the money which the parties had at the time would not enable them—as in those cases generally it would not enable them—to carry their speculation into effect, the Court would be called upon to say, that they should be prohibited from going on with it altogether.

"It would be a new principle to contend, that a party who is under an obligation to sell his property, either under the provisions of an act of Parliament or otherwise, has a right to ask the purchaser, 'Where do you get the money from, with which you are to pay for the property you are purchasing of me?'"

As to what may amount to an abandonment of their powers by a company, see *Thicknesse v. The Lancaster Canal Company*, 4 M. & W. 472.

With regard to the remedies against companies at Common Law, it need only be said, that in addition to the actions of trespass, case, or ejectment, the choice of which will be determined by circumstances; an indictment will lie against a company, in their corporate name: if indicted in the Queen's Bench, they may appear by attorney; if indicted, however, at the assizes or sessions, it is doubtful if they can do so, and it seems that they should, in such a case, apply for a writ of certiorari, to remove the indictment into the Court of Queen's Bench, and that if they neglect to do so, there may be distress *ad infinitum* against them. *Reg. v. Birmingham and Gloucester Railway Company*, 9 C. & P. 469; *Boyd v. Croydon Railway Company*, 4 Bingh. N. C. 669. (See 7 & 8 Vict. c. 85, s. 17,

Appendix, p. 87, which authorizes the Board of Trade to direct prosecutions against railway companies).

In cases, however, where an action or indictment does not prove a sufficient remedy, a mandamus will be granted, which is indeed the ordinary mode of compelling the performance of any particular act.

The requisites to the obtaining a mandamus, are the establishment of a right, and the absence of any other effectual remedy, action or indictment being not necessarily effectual remedies. See the judgment of Lord Denman, in *Reg. v. Eastern Counties Railway Company*, 2 Railway Cases, 275; *Rex v. Severn and Wye Railway Company*, 2 B. & Ald. 646; *Reg. v. Manchester and Leeds Railway Company*. 1 Railway Cases, 523; *Reg. v. Bristol Dock Company*, 2 Q. B. 64. And, generally, proof of a demand to do the thing required, and a refusal, either in words, or presumable from circumstances or lapse of time. *Rex v. Brecknock and Abergarennny Canal Company*, 3 A. & E. 217; *Ex parte Robins*, 7 Dowl. 566; *Reg. v. Hull and Selby Railway Company*, 22 L. J., Q. B. 251; *Ex parte Parkes*, 5 Jur. 435; *Reg. v. Deptford Pier Company*, 8 A. & E. 916; *Reg. v. North Union Railway Company*, 1 Railway Cases, 729; *Rex v. Wilts. and Berks. Canal Company*, 3 A. & E. 477; *Reg. v. Bristol and Exeter Railway Company*, 3 Railway Cases, 433. A mandamus may be granted, although there may be a remedy by application to a Justice. *Reg. v. Norwich and Brandon Railway Company*, 4 Railway Cases, 112; 15 L. J., N. S., Q. B. 21. It will not be granted for the compelling payment of costs, at all events until they have been ascertained and attempted to be levied in the mode pointed out by the Statute. *Reg. v. The Blackwall Railway Company*, 15 L. J., N. S., Q. B. 42, 4 Railway Cases, 119.

It is not a good return to a mandamus, that the thing required cannot be done without purchasing land which the company have no power to purchase. *Reg. v. Birmingham and Gloucester Railway Company*, 2 Q. B. 47; nor that they have made a diverted road as commodious, or more so, for the public, than the old one, if they have not done so in compliance with the act. *Ib.* and *Reg. v. Manchester and Leeds Railway Company*, 2 Railway Cases, 711; nor, it seems, to allege any engineering difficulties; nor is mere expense an excuse. 3 Railway Cases, 34, note (a); (but now see clause 66). After the sufficiency of a return to a mandamus has been decided, on *concilium*, any material fact in it may be traversed. *Reg. v. North Midland Railway Company*, 2 Railway Cases, 1.

(b) *They may make or construct in, upon, &c. any streets, lands, &c. roads, canals, brooks, streams, or other waters, &c. such bridges, roads, &c. arches, &c. as they think proper.* The powers here given, and such others as are necessary, (as a

subsequent part of this section expresses,) for "making, &c., the railway" generally extend to the purpose of making a station. Where a company arched over certain streets, for the purpose of building a station, an injunction restraining them was dissolved by the Court of Exchequer, on the ground that what they had done was necessary for their station. *Attorney General v. The Eastern Counties Railway Company, and Northern and Eastern Railway Company*, 2 Railway Cases 823. The following cases will illustrate, to some extent, what the Courts will or will not consider a legitimate exercise of powers conferred on companies by clauses similar to this. A company were entrusted with the general powers conferred by this section, and in particular, with a power to cross a certain canal, and to make an embankment over a valley near it. They were restricted, in subsequent clauses from doing any thing to impede the navigation of the canal, and compelled to construct *any bridge* for carrying the railway over the canal, of a certain height and dimension. They erected a temporary bridge over the canal, to transport earth across it for their embankment, by means of piles driven into the bed of the canal, and, it would seem, otherwise in contravention of the clause relating to bridges, although, as was admitted, without doing any actual damage to the canal. It was held, by the Master of the Rolls, that the clause empowering the company to cross canals &c., in the progress of their works was not restricted by the subsequent clauses, which applied to permanent bridges. With reference to the general powers conferred on the company, "to do all acts requisite for making, maintaining, altering, repairing or using the railway," his Honor observed, "The question is not whether the railway company can get the earth (for the embankment,) elsewhere, but whether it is not convenient that they should get it from the place in question; they are the best judges of that; and the act makes them the best judges of it." *London and Birmingham Railway Company v. The Grand Junction Canal Company*, 1 Railway Cases, 224; and see the *Attorney General v. The Eastern Counties Railway Company* 3 Railway Cases, 337. The Manchester and Leeds Railway Act conferred general powers similarly to this clause, but subsequently directed that the Aire and Calder Navigation should be crossed at one place by a bridge of certain dimensions. The company having commenced the building of a permanent bridge erected a temporary one adjoining it of the prescribed dimensions, which they used partly for building that bridge, and partly for conveying earth and materials across the river. It was held by Baron Alderson, who dissolved an injunction obtained *ex parte*, that the company had a right in the *bond fide* exercise of their powers to erect such a temporary bridge for the purpose of facilitating the erection of a permanent one that supposing the mere purpose of conveying earth across the



river would not have been a sufficient one to authorize the construction of the bridge, yet, being constructed it might be used for that purpose, provided thereby no damage was done to the navigation, and the bridge was not continued longer than the purpose for which it would have been erected, made necessary, and that a company acting *bond fide* are generally the best judges of the things necessary for constructing their works. *Priestley v. The Manchester and Leeds Railway Company*, 2 Railway Cases, 137.

A railway company proposed to cross a mill-stream by a bridge six feet above the level of the water, to be supported by two piles sixteen feet apart. The owner of the mill (the plaintiff) asserted, that that height was insufficient for barges passing under, that the piles would impede the flow of water and the working of the mill. The company adduced affidavits of engineers to show that the level of the railway and the nature of the ground, prevented them from making the bridge of a greater height; that over a public navigable river, connected with the mill stream there were some bridges only six feet high; that, moreover, at the time of passing this act, there was a bridge over that same stream of that height, which, however, had been pulled down and re-erected higher by the plaintiff; and that the flow of water would not be impeded by the piles. The plaintiff adduced affidavits of engineers to shew that, although some of the bridges over the navigable river were only six feet high, the water under them could be lowered by water gates. That to obtain a perfect level on the line of railway, the embankment, and consequently the bridge over the mill-stream ought to be raised two feet. On these affidavits it was held by the Vice Chancellor that the company had a right to construct the bridge as was proposed, the Lord Chancellor however referred the case to the arbitration of an engineer, remarking that nothing but necessity could justify the company in carrying on their works in such a manner or on such a level, as would cause serious damage to the owner of the land. *Manser v. The Northern and Eastern Counties Railway Company*, 2 Railway Cases, 38. See *Coates v. Clarence Railway Company*, 1 Russ and My. 181.

Where however a company having the usual judicial powers, purchased a private wharf separated from one of their terminus stations by a turnpike road, and proceeded to lay down stone blocks on the road, so as to form two runs or stone ways level with the road, for the purpose of facilitating the passage of goods from the wharf across the road to the station, it was held that they were not authorized to interfere with the road in such a manner. *London and Brighton Railway Company v. Cooper*, 2 Railway Cases, 312.

(c) *They may alter the course of any river, &c.*] Under an act which gave power to divert rivers, watercourses, &c., a

company had raised the level of a brook, into which the sough of a coal mine had been accustomed to empty itself, and thereby caused the water of the brook to flow into the sough, and inundate and stop the coal works: upon the owner of them applying for a mandamus for a jury to ascertain and compensate him for the injury thus done to his works, which was opposed by the company, on the ground, that on the claimant's remonstrance they had restored the brook to its former level, and that no damage had been done by the alteration, such stoppages, having been frequently caused by floods before; it was held by the Court of Queen's Bench that it was a question for a jury to ascertain whether any damage had been done to the claimant, and that his alleging that he was injured by the diverting (*i. e.* altering the level) of the brook, was sufficient to induce the Court to grant a mandamus. And that if damage be done partly under the powers of the statute and partly not, a mandamus, and not an action at law, is the proper remedy for such lawful acts.

*Reg. v. North Midland Railway Company*, 2 Railway Cases, 1; see also *Illingworth v. The Manchester and Leeds Railway Company*, 2 Railway Cases, 187.

If in the course of their works the company make excavations, endangering houses or buildings, an injunction will be granted restraining them. *Warburton v. The London and Blackwall Railway Company*, 1 Railway Cases, 558.

(*d*) *Shall do as little damage as can be, and shall make full satisfaction, &c.*] This seems the proper place to discuss:—1st, For what kind of damage a railway company will be answerable; 2ndly, in what cases the party complaining has his remedy at law; 3rdly, in what he has his remedy under the compensation clauses, and lastly, when these remedies may be concurrent.

1st. A railway company is not liable in any way for such damage, as is the necessary and immediate consequence of the powers conferred upon it by the Legislature, unless they be extraordinarily unreasonable, and for which the Legislature has not directed that compensation shall be made.

In one of the earliest reported railway cases, it appears that a railway was so constructed by authority of Parliament, as to run parallel to and sometimes within five yards of a highway, and the company were authorized to use locomotive engines upon it. An indictment being preferred against them on account of the nuisance to passengers on the highway, created by the engines frightening the horses, it was held not to be sustainable on the above grounds, *viz.*, that the nuisance was an unavoidable consequence of the provisions of the act of Parliament, and that these provisions were not very unreasonable. *Rex v. Pease*, 4 B. & Ad. 30. The particular nuisance here complained of is now wisely obviated by provisions in every act; the case of

the *King v. Pease* is not, however, the worse authority for the position above stated.

2ndly. Where damage of any description arises through any negligence or tortious act on the part of the company, the remedy is at law, and generally at common law.

Where the plaintiff applied for an injunction to restrain a company from erecting ovens near his premises, complaining of the nuisance and danger of fire arising from them, and the company replied that the ovens were necessary for making coke to work their locomotive engines, and carrying on their business generally, the Lord Chancellor dissolved an injunction which had been granted by the Vice Chancellor, on the ground that the plaintiff might have had his remedy by action at common law. *Semple v. London and Birmingham Railway Company*, 1 Railway Cases, 120. This case is obviously distinguishable from the last, in as far as it did not appear but that the company might have erected their ovens elsewhere, or some other way, so as not to have produced the damage complained of; whereas, in the former case, the locomotives could not have been used in any other place or manner than they were.

In a recent action brought against the Great Western Railway Company, the declaration alleged, that through the negligence and improper management of the engine, on the part of the servants of the company, fire and coals fell upon the stack of the plaintiff, in a field adjoining the railway, to which the company pleaded not guilty, and a special case was stated for the opinion of the Court, by order of a judge, under the 3 & 4 Wm. 4, c. 42, s. 25, in which it appeared that the stack was eleven yards from the rails of the railway, and that the engines and boilers used upon the railway were of the ordinary description, and were used, at the time of the occurrence in question, in the ordinary manner, it was held, that, upon the facts stated, there was evidence to go to a jury of carelessness of the defendants, and that the defendants were not entitled to a nonsuit; in this case, Tindal, C. J., says, "I am not prepared to say, in favour of the defendants, that they would be entitled to nonsuit the plaintiff upon such a state of facts being proved as is here disclosed, for I cannot say that the very circumstance of igneous matter being thrown out of an engine might not form of itself an ingredient of carelessness of which the jury might be called upon to judge." Maule J., "I think it clear that the plaintiff ought not to be nonsuited, because there is evidence for the jury as to the negligence of the defendants." *Aldridge v. The Great Western Railway Company*, 1 Dowl. N. S. 247.

At the last assizes held at Maidstone, damages were recovered in two actions, under nearly similar circumstances. Although the rule is undubitable that in no case will the jury be directed to find for the plaintiff, unless some negligence is attributable to the company, it is extremely possible that the

Courts will consider many acts and omissions to ~~comm~~ negligence which are not ordinarily supposed to do so. Justice Tindal throws out that possibly the escape of ~~an~~ igneous matter from the engine may be a consequence of ~~looseness~~—suppose it should appear that the escape of ~~an~~ igneous matter might be prevented by a tangle of wire ~~and~~ but that the steam power required and consequently the ~~exp~~ would be greater—~~quere~~, would the omission of such ~~guard~~ be held an act of carelessness? See *Davis v. London and Blackwall Railway Company*, 2 Railway Cases, 308; 11 & G. 799. *Warburton v. The same*, 1 Railway Cases, 211. *Reg. v. London and Southampton Railway Company*, 3 Railway Cases, 34. *Reg. v. Scott*, 3 Q. B. 543. *Smith v. Shaw*, 10 B. & C. 284. In the most recent action for this cause, the evidence was that shortly after the engine had passed near the building, the latter was observed to be on fire, that sparks had been seen on various occasions to be emitted by the engine that the emission of sparks depended on the rate at which the engines were impelled, having reference to their power, and that there were modes by which it could be prevented. It was held that this evidence showed a *prima facie* case of negligence for which the company were responsible. *Piggot v. The Eastern Counties Railway Company*, 10 Jurist, 571.

In addition to damage wilful or negligent, all damage done in pursuance of the powers of the act with the exception of one class of cases which will be noticed hereafter, is the province of courts of law or equity—commonly of the former, courts of equity only interfering to stay damage which would be irreparable, and generally where courts of law have sufficient powers to afford redress. Thus, where a company were empowered to pull down certain houses, &c. schedule and compensation clauses were added for persons “damaged or injured by the taking down of any of the messuages or buildings for the purposes or otherwise in the execution of the act” it was held that a person damaged by the taking down of a house not mentioned in the schedule, was entitled to no compensation under the act. *Rex v. Hungerford Market Company*, 3 N. & M. 622. It had been previously held that the same company were not liable under the compensation clause for damage done by removing a party wall between premises purchased by the company pursuant to their act, and the house of the plaintiff, after a notice given under the building act. *Rex v. Hungerford Market Company*, 2 N. & M. 340.

3rdly. Where damage is unavoidably done in pursuance of the powers of the act, the complaining party is bound to come in under the compensation clauses, and where damage be done partly in pursuance of the power of the act, and partly not, an action will not lie, at least for such part of the damage as is authorized by the act. *Reg. v. North Midland Railway Com*

pany, 2 Railway Cases, 1. If the company refuse to take the proper steps for assessing compensation the Court of Queen's Bench will grant a mandamus to compel them.

Lastly, if lands are omitted from the schedule to the act, which ought to have been included in it, it seems that, if they are taken or damaged, the owner may exercise his option of coming in under the compensation clauses, or bringing his action, (on the ground, it is presumed, that the company shall not enjoy the exemption from action which the act affords them, unless they comply with its provisions; and that the landowner, on the other hand, shall not be deprived of the right to compensation because he has been omitted from the schedule) unless indeed the injury be consequential merely, and of a description not easily foreseen, in which case, probably, he would be bound to apply for compensation under the act.

The reversioner of a house not included in the schedule of the Sheffield and Rotherham Railway Act, whose lights were obstructed by a station, and which suffered also from dust being driven against it, recovered damages from the company in an action on the case. Mr. Baron Parke said, "There is no doubt some inconvenience to the company in their being exposed to actions from unforeseen consequential damages arising from these acts to houses, buildings, gardens, &c., not comprised within the schedule, as by stopping springs communicating with them, or the like, and we are not prepared to say that such inconvenience may not afford a ground in those cases where the damage could not have been foreseen, for limiting the general expression, and exempting the company from liability to an action, leaving the party injured his right to compensation for the damage sustained. On that point, however, we pronounce no judgment; but in such a case as this, in which the said damage could have been foreseen, when the station and embankment were made, we see no reason to qualify the words of the clause (20th), and, consequently, the company are liable to an action for damaging the house in question, by reason of obstructing its lights, and the nuisance caused it by dust and dirt from erecting the station and embankment so near it. As this house was erected before the 30th November, 1835, the company ought to have considered before the act was passed, whether the construction of any of these works would be injurious to it, and caused it to be inserted in the schedule; and if that had been done, the owner of the house would have been put on his guard, and might have avoided the passing of the act. It was the fault of the company to omit it, and they must suffer for the omission, and as they cannot now be permitted to purchase the house directly without the owner's consent, so they cannot be allowed to buy indirectly by causing its lights to be obstructed, and then

leaving the owner to seek compensation under the Act. Where, however, the damage done is a direct and legal consequence of the powers given by act of Parliament, or omission or negligence on the part of the company is shewn, either in framing the schedule of their act, or in conducting their operations, no action or indictment will lie against them, but the only remedy is a mandamus to summon the company to assess damages which the Court will grant, wherever damage to property is made out. *Turner v. The Sheffield and Rotherham Railway Company*, 10 M. & W. 425. See, also, the Land Clauses' Act.

If a company expressly covenants to perform certain duties in a certain manner, the Court of Chancery will direct specific performance of their contract, if it appears that damages at law would not be a sufficient remedy for the non-performance of it. *Storer v. The Great Western Railway Company*, 3 Railway Cases, 106.

Works below high-water mark not to be executed without the consent of the Lords of the Admiralty.

XVII. It shall not be lawful for the company to construct on the shore of the sea, or of any bay, arm of the sea, or navigable river communicating therewith, where and so far up the said river as the tide flows and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of her Majesty, her heirs and successors, to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the lord high admiral of the United Kingdom of Great Britain and Ireland, or the commissioner executing the office of lord high admiral aforesaid for the time being, to be signified in writing in the hand of the secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said lord admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the

pany at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals ; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said lord high admiral, or the said commissioners for executing the office of lord high admiral, to abate and remove the same, and to restore the sight thereof to its former condition, at the cost and charge of the company ; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

XVIII. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the water-courses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours notice for that purpose (a).

Alteration  
of water  
and gas  
pipes, &c.

XIX. Provided always, That it shall not be lawful Company  
not to dis-

turb pipes  
until they  
have laid  
down  
others.

for the company to remove or displace any of the mains or pipes (other than private service pipes,) syphons, plugs, or other works belonging to any such company or society, or to do any thing to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct (a).

(a) Where a public company has a right to interfere with pipes laid under the pavement of a street, the workmen they employ are bound to use such care and caution, in doing the works as will protect the King's subjects (themselves using reasonable care) from injury; and if they so lay the stones as to give such an appearance of security as would induce a moderately careful person to tread upon them as safe, when, in fact, they are not so, the company will be answerable, in damages, for any injury such person may sustain in consequence. *Drew v. The New River Company*, 6 C. & P. 754.

Pipes not to  
be laid con-  
trary to any  
act, and 18  
inches sur-  
face road to  
be retained.

XX. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Company  
to make

XXI. The company shall make good all damage



done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water. good all damage.

XXII. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs. When railway crosses pipes, company to make a culvert.

XXIII. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct. Penalty for obstructing supply of gas or water.

XXIV. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power, in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence. Penalty for obstructing construction of railway.

And whereas there are large tracts of land in Ireland subject to flood and injury by water, and the rivers, streams, and watercourses are in many places obstructed by shoals, insufficient bridges, cul- *Drainage of Lands.*

1 & 2 W. 4.  
c. 57.

5 & 6 Vict.  
c. 89.

verts, weirs, and other works, whereby the waters thereof are elevated above their natural level: And whereas an act of Parliament was passed in the second year of the reign of his late Majesty King William the Fourth, intituled *An Act to empower Landed Proprietors in Ireland to sink, embank, and remove Obstructions in Rivers*: and whereas another act was passed in the sixth year of the reign of the present Majesty, intituled *An Act to promote the Drainage of Lands, and Improvement of Navigation and Water Power in connexion with such Drainage in Ireland*; and by the said last-mentioned act public commissioners were appointed to carry the said last recited act into execution: And whereas it is essential for carrying into effect the purposes of the said acts and for the improvement of agriculture, that ample provision be made in all railway works in Ireland for the free and uninterrupted passage of the waters at such level as will be sufficient not only for the present but all future discharge of the waters from lands crossed by or being on either side of such works, and that the bridges of railways crossing all watercourses, rivers, lakes, or estuaries which are or hereafter may be made navigable shall be so constructed as to admit of the commodious navigation of the same. Therefore, with respect to the provision to be made for the drainage of land in Ireland which may be crossed by the railway, and for the protection of the navigation connected therewith, be it enacted as follows:

The company from time to time to submit to the drainage commissioners in Ireland plans, &c. of the portion of the

XXV. If the special act shall authorize the construction of a railway in Ireland, the company shall and they are hereby required, from time to time before proceeding to construct any portion of the railway, to submit to the commissioners acting in execution of the said act of the sixth year of the present Majesty, or any act amending the same such plans, sections, and surveys as shall be necessary to enable the said commissioners to decide

upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses, and other works across the line of such portion as aforesaid of the railway, for the free and uninterrupted discharge of the waters from all lands crossed by or lying on either side of or near the railway, at such level as shall in the opinion of the said commissioners be sufficient for the present and prospective drainage and improvement of such lands, and (in cases of rivers, lakes, estuaries, or watercourses, which are now or may be capable of being made navigable,) upon the height and adequacy of all bridges and works crossing the same, for the commodious navigation thereof.

railway which they are about to execute.

XXVI. The said commissioners shall and they are hereby required, without any unnecessary delay, to investigate, by such means as to them shall seem fit, the adequacy of all such works for such purposes as aforesaid, and to decide and certify, by a writing under their hands, or the hands of any two of them, the number, situation, and least possible dimensions as to breadth, depth, and height of the several openings of such bridges, culverts, tunnels, or other works connected with such portion of the railway as aforesaid, which shall be necessary for the passage of water, or for navigation under or across such railway; and it shall not be lawful for the company to proceed with the execution of any of the works connected with any portion of the railway without having first obtained such a certificate as aforesaid respecting such portion of the railway, under the hands of the said commissioners or any two of them, as aforesaid; nor shall the company be at liberty to deviate from such certificate in respect to such works, nor to execute the same otherwise than in conformity therewith, without the previous approbation in writing of the said commissioners.

Such commissioners to investigate and report on the works necessary for drainage.

XXVII. It shall be lawful for the said commis-

Summary application

to the Court of Chancery to enforce the execution of such works.

sioners to apply by petition in a sum the Court of Chancery, complaining of on the part of the company to submit sections, and surveys to the said commissioners, or of the omission to construct bridge, culvert, tunnel, or other works for the passage of water, in such manner as shall be directed by the said commissioners, and there shall be lawful for the said Court to direct to be made or constructed by the company in such manner as shall be conformable to the directions of the said commissioners, and to the said commissioners to make such order as shall seem necessary or proper, and to make from time to time such further or other order for the company or any other persons from time to time with any of the works connected with the railway, except in conformity with the directions of the said commissioners, and to issue an injunction for the purpose aforesaid; and the said commissioners shall have power to award costs to be paid by the company or persons.

Saving of the powers of the drainage commissioners.

XXVIII. Nothing in this or the special Act shall extend or be construed to prejudice the powers or authorities of the drainage commissioners in the execution of the said act of the sixth year of the present Majesty, but all such powers shall have full force as to the formation of any new watercourse across the railway, but shall not be exercised so as to prevent the working or using of the railway.

The drainage commissioners in Ireland to have power to decide questions as to the execution of works or to

XXIX. And whereas it is expedient to provide for the establishment of manufactories to be supplied with water power in Ireland; be it therefore enacted by Her Majesty that whenever it may be requisite for the establishment of a watercourse for manufacturing purposes, the company shall construct an arch, culvert, tunnel, or watercourse underneath or an aqueduct above any railway, and that differences shall have arisen

directors of such railway and the person interested in obtaining the water power, either as to the manner in which such works shall be executed, or the amount of compensation which should be paid, it shall be lawful to refer the questions in issue to the commissioners acting under the said recited act of the fifth and sixth years of the reign of her Majesty Queen Victoria, and their decision thereon shall be final and conclusive; and if the said commissioners shall be of opinion that the proposed works can be executed without injury to the railway, and if they shall think proper so to do, they may undertake the execution of so much of the said works as shall be in connexion with such railway, at the expense of the parties for whose benefit the watercourse shall be made, with the same powers and authorities as are given by the said act for the execution of any works for drainage.

execute  
works for  
carrying  
water-  
courses  
across the  
railway.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows :

*Temporary  
Use  
of Lands.*

XXX. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they

Company  
may oc-  
cupy tem-  
porarily  
private  
roads  
within five  
hundred  
yards of the  
railway.

intend to occupy such road, and shall pay to owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, and in case they differ about the compensation, the matter shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds directed to be settled by the said Lands Clauses Consolidation Act.

Power to owners and occupiers of road and land to object that other roads should be taken.

XXXI. It shall be lawful for the owners and occupiers of any such road, and of the lands through which the same passes, within ten days after service of the aforesaid notice by notice in writing to the company to object to the company making use of such road, on the ground that other roads such as the company are herein-before authorised to use for the purposes aforesaid, or that some public road, would be more fitting to be used for the same; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks notice is herein-after required to be given, and in the same manner as if in the provisions relating to such proceedings the word road or roads, or the words road and the land over which the same passes as the case may require, had been substituted in the provisions for the word lands.

Power to take temporary possession of land without previous payment of price.

XXXII. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any land within the prescribed limits, or if no limits be

scribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, herein-after mentioned, and to use the same for any of the following purposes; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing spoil thereon;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side of the railway:

And in exercise of the power aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid, to erect thereon workshops, sheds, and other buildings of a temporary nature; Provided always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers herein-before given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or

slate quarry, brick field, or other like place, w  
at the time of the passing of the special act sha  
commonly worked or used for getting materials t  
from for the purpose of selling or disposing of  
same, shall be taken or used by the company, e  
wholly or in part, for any of the purposes lastly  
in-before mentioned.

Company to  
give notice  
previous to  
such tempo-  
rary posses-  
sion.

XXXIII. In case any such lands shall be  
quired for spoil banks or for side cuttings, or  
obtaining materials for the construction or repa  
the railway, the company shall before entering th  
on (except in the case of accident to the railway  
quiring immediate reparation,) give three w  
notice in writing to the owners and occupiers of  
lands of their intention to enter upon the same  
such purposes; and in case the said lands are req  
for any of the other purposes herein-before ment  
the company shall (except in the cases aforesaid)  
ten days' like notice thereof, and the company  
in such notices respectively state the substance of  
provisions herein-after contained respecting the  
of such owner or occupier to require the compan  
purchase any such lands, or to receive compens  
for the temporary occupation thereof, as the case  
be. (a)

(a) The following case, though not decided on a pre  
similar clause to this, will somewhat illustrate the consequ  
of not specifying in the notice the purpose for which land  
wanted, and the extent to which the Court of Chancery  
inquire whether the company be acting *bond fide* or not.

A company had carried their line of railroad by mean  
cutting through part of plaintiff's field, which they had  
chased and paid for; subsequently, they gave notice of  
intention to take the remaining part of it. The solicitor  
railway on being questioned as to the purpose for whic  
company wanted the remainder of the field, answered i  
following terms:—"The land is wanted immediately fo  
purpose of providing the company with earth for makin  
embankment; its further appropriation is not settled. I  
part of it should not ultimately be required, the compan  
bound to offer it to the former possessors, or the own  
adjoining lands."



On a bill being filed for having the value of a piece of land assessed by a jury, to restrain the company from completing the proceedings they had already commenced, and from taking possession of it, an injunction to this effect was granted by the Master of the Rolls.

The defendants, subsequently, by their answer, admitted that there was no embankment on the land in question, and that, on the contrary, the line over the field was formed in cutting; but they stated that they required to take the piece of land in question: 1st. to employ the soil in forming an embankment on a neighbouring part of the line. 2dly, For making a greater slope on each side of the cutting; an alteration, the necessity of which had been ascertained subsequently to the giving of their notice, but before the statement above referred to of the solicitor of the company of the purposes for which the land was wanted; and they alleged that to prevent slips it was necessary to remove the soil from the surface of the land.

After this answer the defendants applied to the Master of the Rolls to dissolve the injunction, which his lordship did.

On the plaintiff's motion that the injunction be revived, upon which there was much conflicting testimony of engineers, the question as to which portion of the field was necessary to be taken in order effectually to secure the cutting, was referred to an engineer, agreed upon by both parties, who reported that a part only of the land in question was necessary; the Lord Chancellor ordered that an injunction should be granted to restrain the defendants from going before the jury claim more of the land than was stated in the engineer's report to be necessary.

The Lord Chancellor said, "the question turns on what is presented on different sides by the engineers. Undoubtedly I cannot sanction a proceeding which shall make me the judge of engineering questions: but I must look at the affidavits and the purpose of seeing whether this transaction is a *bonâ fide* proceeding upon the powers given by the act: although it may be the case that subsequent events have given the company a title which they had not in the beginning, yet if it appears that they have now the right to take this land, I do not think this Court will interfere to prevent them exercising that right; but I certainly cannot sanction their judging that the land is necessary for the purposes of the act in order to enable them to take it for a purpose totally distinct. The powers are so large, it may be necessary for the benefit of the public, but they are so large and so injurious to the interests of individuals, that I think it the duty of every court to keep them most strictly within those powers. *Webb v. The Manchester and Leeds Railway Company*, 4 Myl. & Cr. 116.

As to what may or may not be considered "temporary

occupation" of land, see *Innocent v. North Midland Railway Company*, 1 Railway Cases, 242.

Any subsequent treating with a company will be construed as a waiver of objection to the proceedings—such as irregularity in their notice, or neglect to give notice in time or substance. See *Tower v. The Eastern Counties Railway Company*, 3 Railway Cases, 374.

Service of notices on owners and occupiers of lands.

XXXIV. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any owner shall be absent from the United Kingdom and cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or if there be no such occupier, shall be fixed upon some conspicuous part of such lands.

(a) See form of notice—Appendix.

Power to owner to object that other lands ought to be taken.

XXXV. In any case in which a notice of two weeks is herein-before required to be given, it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as herein-after mentioned.

Power to two justices to order that the lands and materials

XXXVI. If the objection so made, be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein are essential to be retained by the owner in order

the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for any special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use. (a)

(a) These clauses, which have lately been inserted in most Railway Acts, are a great improvement in railway legislation. Questions, such as whether this or that field will answer the purposes of the company better, or equally well, while the evidence may be most material to the landowner, are questions peculiarly suited to the determination of justices, and at which the Courts have always refused to interfere, though many applications have been made to them. If the company use lands without due notice, or use them for purposes wholly (not trivially) different from those for which they pretended to want them, the usual remedies at law must of course be resorted to.

XXVII. If the objection so made as aforesaid Power to  
justices to

order other  
lands to be  
taken.

be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are before authorized to use for the purposes aforesaid would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any person on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, the time not being more than fourteen days after the date of application, nor less than seven days from the date of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine upon which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly (a).

(a) A railway company may be indicted by their common name for disobeying an order of justices. If indicted at the Queen's Bench, they may appear by attorney, but if indicted at assizes or session, where they cannot appear by attorney, it seems their proper course is to apply for a writ of certiorari to move it into the Queen's Bench; and if they do not move, a writ of habeas corpus may be distress, *ad infinitum*, against them, 3 Q. B. 211 & P. 469.

Power to  
the justices  
to summon  
other owners  
before  
them.

XXXVIII. If in the case last mentioned the company do not appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are herein-before authorized to use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned, it shall be lawful for the said justices to adjourn such inquiry, and to summon such

person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

XXXIX. Before entering, under the provisions herein-before contained, upon any such lands as shall be required for spoil banks or for side cuttings, for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the execution of the notice to take such lands as herein-before mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

The company to give sureties, if required.

XL. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such

Company to separate the lands before using them.

fences and gates as to any two magistrates :  
deem necessary for the purposes aforesaid, on a  
caution being made to them in like manner as he  
before is provided in respect to the use of  
roads.

Lands  
taken for  
getting ma-  
terials, &c.  
to be work-  
ed as the  
surveyor of  
owner may  
direct.

**XLJ.** That if any land shall be taken or used  
the company, under the provisions of this or the  
special act, for the purpose of getting materials there-  
from for the construction or repair of the railway  
the accommodation works connected therewith,  
shall work the same in such manner as the surveyor  
or agent of the owner of such land shall direct  
in case of disagreement between such surveyor  
agent and the company, in such manner as any  
justice shall direct, on the application of either party  
after notice of the hearing the application shall  
been given to the party.

Owners of  
lands may  
compel  
company to  
purchase  
lands so  
temporarily  
occupied.

**XLII.** In all cases in which the company shall  
exercise of the powers aforesaid enter upon  
lands for the purpose of making spoil banks or  
cuttings thereon, or for obtaining therefrom materials  
for the construction or repair of the railway, it  
shall be lawful for the owners or occupiers of such lands  
or parties having such estates or interests therein  
as, under the provisions in the said Lands Clauses  
Consolidation Act mentioned, would enable them to  
sell or convey lands to the company, at any time  
during the possession of any such lands by the com-  
pany, and before such owners or occupiers shall have  
accepted compensation from the company in respect of  
such temporary occupation, to serve a notice in  
writing on the company requiring them to purchase  
the said lands, or the estates and interests therein  
capable of being sold and conveyed by them respec-  
tively; and in such notice such owners or occupiers  
shall set forth the particulars of such their estate  
interest in such lands, and the amount of their claim  
in respect thereof; and the company shall thereupon

be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice. (a)

(a) As to when a private road running through lands will or will not be supposed to be purchased with them, see *Kemp v. London and Brighton Railway Company*, 1 Railway Cases, 637, post.

XLIII. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature, which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special act granted, including the full value of all clay, stone, gravel, sand and other things taken from such lands.

Compensation to be made for temporary occupation.

XLIV. The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be deter-

Compensation to be ascertained under the

**Lands  
Clauses  
Act.**

mined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

*Lands for  
additional  
Stations.*

Land to be  
taken for  
additional  
stations, &c.

XLV. And be it enacted, That it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of this or the special act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes ; (that is to say,)

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences :

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

*Crossing of  
Roads and  
Construc-  
tion  
of Bridges.*

And with respect to the crossing of roads, or other interference therewith, be it enacted as follows :

Crossing of  
roads.

XLVI. If the line of the railway cross any turnpike road (a) or public highway, then (except where otherwise provided by the special act) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge of the height and width and with the ascent or descent by this or the special act in that behalf provided ; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times there



tained at the expense of the company: always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway over any highway, other than a public carriage way, on a level.

[*Turnpike Road.*] A road on which toll-gates are erected and tolls taken at them is a turnpike road, and no tolls be taken for the benefit of the public, or for the use of individuals; whether the road be rateable or not, &c. *See The London and North Western Railway Company v. The London and North Western Turnpike Road Company*, 6 M. & W. 428.

It may be desirable for trustees or surveyors to make arrangements with railway companies before the passing of their bills, as to the manner in which roads shall be crossed. In such circumstances such agreements will be valid, see s. 8.

If the railway cross any turnpike road or carriage road on a level, the company shall at all times maintain good and sufficient bridges over such road, on each side of the railway, and shall communicate therewith, and shall cause proper persons to open and shut such bridges, and such gates shall be kept constantly open, and such road on both sides of the railway, during the time when horses, cattle, carts, &c. passing along the same shall have to cross the railway; and such gates shall be of such construction, and so constructed as when closed to prevent cattle or horses from entering upon the railway, and prevent the person intrusted with the care of such road from causing the same to be closed as soon as horses, cattle, carts, or carriages shall have passed over the same under a penalty of forty pounds for every default therein; Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more for the public safety that the gates on any railway crossing over any such road should be kept open, to order that such gate

Provision in cases where roads are crossed on a level.

shall be kept so closed, instead of across the roads, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

As to crossing of turnpike roads adjoining stations.

XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour: and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

Construction of bridges over roads.

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet (*a*) if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road:

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of eight feet shall not be less than fourteen feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act.

(a) *The width of the arch shall be such as to leave a clear space of not less, &c.*] This clause does not prevent the company from erecting piers on the turnpike or other road, provided they leave the required space under one or more of their arches; for example, if a private road be thirty feet wide, they may erect a pier in the middle of it. *Attorney-General v. The London and Southampton Railway Company*, 9 Sim. 78; 1 Railway Cases, 314. Nor is it a sufficient objection to their making a road in order to make the arch of the requisite height, at an inclination not greater than the act requires, that it becomes thereby liable to be occasionally flooded. *Aldred v. The North Midland Railway Company*, 1 Railway Cases, 314.

The following case will illustrate the strictness with which the Courts will enforce performance of provisions similar to those:—

The Manchester and Leeds Railway Company were prohibited by their act from carrying their railroad across a certain turnpike road, except by a bridge thirty feet wide, so as to form a clear carriage road of twenty-four feet, and footway of six feet. It was also provided that the height of the bridge should be eighteen clear feet from the surface of the road, to be obtained by lowering the road if necessary at a certain maximum inclination. The company built their bridge, and sunk a carriage road under it to the depth of nine feet below its former level, and eighteen feet below the arch, but they did not sink the footway, and in some places contracted the width of it to three and a half feet, by means of steps which they made descending from it to the carriage road. They stated that they had purchased land on each side of the road to enlarge the footpath, which could not have been lowered without seriously injuring the property of other persons, and endangering several dwelling-houses adjoining the

footpath, as well as making the entrance into them extremely inconvenient: under these circumstances a rule for issuing a mandamus was made absolute to compel the company to construct the road in compliance with the act. *Regina v. The Manchester and Leeds Railway Company*, 1 Railway Cases, 523.

The Court will refuse to dispense with compliance with the terms of the act, even though a jury find that the company have made the road more commodious than it was before. *Regina v. The Manchester and Leeds Railway Company*, 1 Gale and Dav. 338.

This judgment of the Court of Queen's Bench, however, has since been reversed in the Exchequer Chamber, on a point of construction of the local act, 3 Q. B. 528, 3 Railway Cases, 633.

On an indictment being brought against the engineer of a company for having, in carrying a road under a railway, erected a skew bridge which diverted the road to an angle of forty-five degrees instead of thirty-four degrees, the former angle which it had made at that particular point, Alderson, B., directed the jury that "if the public sustained inconvenience by the alteration, they should find for the Crown; but that if the work was done in a mode in which an experienced engineer would do it, having reasonable regard to the interests both of the company and the public, the company had a right to make such diversion." The jury having found for the defendant on this ruling, the Court refused to grant a new trial. *Regina v. Sharpe*, 3 Railway Cases, 33.

It seems if a mandamus be granted ordering the construction of a bridge, it will require some particular thing to be done, and not, in general terms, "that it be made conformable to the provisions of the act." *Regina v. The Eastern Counties Railway Company*, 3 Railway Cases, 33. See this case also on the subject of the interference of the jurisdiction of commissioners under a local paving act, with the powers of a railway company, where the special act may contain a clause that nothing in it "shall derogate from any of the rights or privileges of any parish over which the railway shall pass, acting under any local act."

Construction of bridges over railway.

L. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations: (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate ap...

person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

XXXIX. Before entering, under the provisions herein-before contained, upon any such lands as shall be required for spoil banks or for side cuttings, for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be proved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved by such justice, in case the parties differ, conditioned for the payment of such compensation as may come payable in respect of the same in manner herein mentioned.

The company to give sureties, if required.

XL. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such

Company to separate the lands before using them.

fences and gates as to any two magistrates ~~==~~ deem necessary for the purposes aforesaid, on a ~~c~~cation being made to them in like manner as her ~~c~~ before is provided in respect to the use of ~~==~~ roads.

Lands taken for getting materials, &c. to be worked as the surveyor of owner may direct.

XLI. That if any land shall be taken or used by the company, under the provisions of this or the special act, for the purpose of getting materials ~~the~~ from for the construction or repair of the railway, the accommodation works connected therewith, ~~th~~ shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, ~~d~~ in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party after notice of the hearing the application shall ~~be~~ been given to the party.

Owners of lands may compel company to purchase lands so temporarily occupied.

XLII. In all cases in which the company shall exercise of the powers aforesaid enter upon ~~a~~ lands for the purpose of making spoil banks or ~~a~~ cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it ~~sh~~ be lawful for the owners or occupiers of such land or parties having such estates or interests thereas, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall ~~be~~ accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon

d to purchase the said lands, or the estate  
rest therein capable of being sold and con-  
the parties serving such notice. (a)

to when a private road running through lands will  
be supposed to be purchased with them, see *Kemp  
and Brighton Railway Company*, 1 Railway Cases,

. In any of the cases aforesaid, where the Compensation to be  
shall not be required to purchase such lands, made for  
other cases where they shall take tempo- temporary  
ession of lands by virtue of the powers occupation.  
in the special act granted, it shall be incum-  
the company, within one month after their  
n such lands, upon being required so to do,  
the occupier of the said lands the value of  
or dressing that may be thereon, as well as  
ensation for any other damage of a tempo-  
e, which he may sustain by reason of their  
possession of his lands, and shall also from  
ne during their occupation of the said lands  
early to such occupier or to the owner of  
as the case may require, a rent to be fixed  
stices, in case the parties differ, and shall  
n six months after they shall have ceased  
the said lands, and not later than six  
ter the expiration of the time by the special  
l for the completion of the railway, pay to  
r and occupier, or deposit in the bank for  
it of all parties interested, as the case  
ire, compensation for all permanent or  
, damage or injury that may have been  
by them by reason of the exercise, as  
ie said lands, of the powers herein or in  
l act granted, including the full value of  
tone, gravel, sand and other things taken  
lands.

The amount and application of the pur- Compensation to be  
ey and other compensation payable by the ascertained  
n any of the cases aforesaid shall be deter- under the

**Lands  
Clauses  
Act.**

mined in the manner provided by the said Land Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

**Lands for  
additional  
Stations.****Land to be  
taken for  
additional  
stations, &c.**

XLV. And be it enacted, That it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the power of this or the special act, to contract with any person willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding the whole the prescribed number of acres for extraordinary purposes ; (that is to say,)

For the purpose of making and providing additional stations, yards, wharfs, and places for accommodation of passengers, and for receiving, depositing, and loading or unloading goods and cattle to be conveyed upon the railway, and the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences :

For the purpose of making convenient roads and ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

**Crossing of  
Roads and  
Construction  
of Bridges.****Crossing of  
roads.**

And with respect to the crossing of roads and other interference therewith, be it enacted as follows :

XLVI. If the line of the railway cross any town or pike road (a) or public highway, then (except where otherwise provided by the special act) either the road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge of the height and width and with the ascent or descent by this or the special act in that behalf provided ; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times the



after maintained at the expense of the company: Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

(a) *Any Turnpike Road.*] A road on which toll-gates are by law erected and tolls taken at them is a turnpike road, whether such tolls be taken for the benefit of the public, or private individuals; whether the road be rateable or not, &c. *The Northam Bridge Roads' Company v. The London and Southampton Railway Company*, 6 M. & W. 428.

It may often be desirable for trustees or surveyors to make agreements with railway companies before the passing of their act, relative to the manner in which roads shall be crossed. Under what circumstances such agreements will be valid, see ante, pp. 7 and 8.

XLVII. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same under a penalty of forty shillings for every default therein; Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gate

Provision in cases where roads are crossed on a level.

shall be kept so closed, instead of across the roads, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

As to crossing of turnpike roads adjoining stations.

XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour : and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

Construction of bridges over roads.

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) be built in conformity with the following regulations ; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet (*a*) if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road :

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road ; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet :

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road :

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act.

(a) *The width of the arch shall be such as to leave a clear space of not less, &c.*] This clause does not prevent the company from erecting piers on the turnpike or other road, provided they leave the required space under one or more of their arches; for example, if a private road be thirty feet wide, they may erect a pier in the middle of it. *Attorney-General v. The London and Southampton Railway Company*, 9 Sim. 78; 1 Railway Cases, 314. Nor is it a sufficient objection to their making a road in order to make the arch of the requisite height, at an inclination not greater than the act requires, that it becomes thereby liable to be occasionally flooded. *Aldred v. The North Midland Railway Company*, 1 Railway Cases, 64.

The following case will illustrate the strictness with which the Courts will enforce performance of provisions similar to these:—

The Manchester and Leeds Railway Company were prohibited by their act from carrying their railroad across a certain turnpike road, except by a bridge thirty feet wide, so as to form a clear carriage road of twenty-four feet, and footpath of six feet. It was also provided that the height of the bridge should be eighteen clear feet from the surface of the road, to be obtained by lowering the road if necessary at a certain maximum inclination. The company built their bridge, and sunk a carriage road under it to the depth of nine feet below its former level, and eighteen feet below the arch, but they did not sink the footway, and in some places contracted the width of it to three and a half feet, by means of steps which they made descending from it to the carriage road. They stated that they had purchased land on each side of the road to enlarge the footpath, which could not have been lowered without seriously injuring the property of other persons, and endangering several dwelling-houses adjoining the

footpath, as well as making the entrance into them extremely inconvenient: under these circumstances a rule for issuing mandamus was made absolute to compel the company to construct the road in compliance with the act. *Regina v. The Manchester and Leeds Railway Company*, 1 Railway Cases, 523.

The Court will refuse to dispense with compliance with the terms of the act, even though a jury find that the company have made the road more commodious than it was before. *Regina v. The Manchester and Leeds Railway Company*, Gale and Dav. 338.

This judgment of the Court of Queen's Bench, however, has since been reversed in the Exchequer Chamber, on the point of construction of the local act, 3 Q. B. 528, 3 Railway Cases, 633.

On an indictment being brought against the engineering company for having, in carrying a road under a railway, erected a skew bridge which diverted the road to an angle of forty-five degrees instead of thirty-four degrees, the judge directed the jury that "if the public sustained inconvenience by the alteration, they should find for the Crown; but if the work was done in a mode in which an experienced engineer would do it, having reasonable regard to the interest of the company and the public, the company had a right to make such diversion." The jury having found for the defendant on this ruling, the Court refused to grant a new trial. *Regina v. Sharpe*, 3 Railway Cases, 33.

It seems if a mandamus be granted ordering the construction of a bridge, it will require some particular thing to be done, and not, in general terms, "that it be made conformable to the provisions of the act." *Regina v. The Eastern Counties Railway Company*, 3 Railway Cases, 33. See this case on the subject of the interference of the jurisdiction of commissioners under a local paving act, with the powers of a railway company, where the special act may contain a clause that nothing in it "shall derogate from any of the rights or privileges of any parish over which the railway shall pass, acting under any local act."

Construction of bridges over railway.

L. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations: (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than six feet, and on each side of the immediate

proaches of such bridge of not less than three feet :

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road :

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act. (a)

(a) The Birmingham and Gloucester Railway Company were authorized, subject to the restrictions of the act, to make across the railway such roads as they should think proper.

By sect. 41, When any part of any road, either public or private, should be cut through, raised, sunk or taken, or so much injured by the company as to be impassable or inconvenient, the company should previously cause another road to be set out equally convenient. By sect. 47, Where any bridge should be erected for carriages, any turnpike road, public highway, or occupation road over any railway, the road over such bridge should not be less than fifteen feet.

A mandamus reciting that the company had, in November, 1838, (after the compulsory power of taking land had expired) cut through and taken part of a turnpike road, which was forty feet wide, and had made a bridge thereon for carrying it over the railway, the said bridge and *the approaches* (which were about one hundred and fifty yards long on each side of the bridge) being about thirty feet wide only, commanded the company to restore the turnpike road according to the said act.

The company returned, 1—That they had not “cut through and taken” the said part of the turnpike road, within the meaning of the act. 2—That the company had judged it necessary to erect the bridge to carry the road over the railway, and had made the bridge of a greater width than was required by the act. 3—That it was necessary, in consequence of the erection of such bridge, to make approaches also, and that they

had made the approaches as *convenient* to the public original road was. 4—That they were not authorized to any house, unless specified in the schedule to the act, or from it by mistake, without consent : that they could not the writ without injuring houses, neither specified nor by mistake. 5—That they could not obey the writ without taking more land, and that their compulsory power to take had expired before they were required by the trustees of the road to widen it. It was held, that they had taken the land within the meaning of the act, and that the return was valid, and a peremptory mandamus was issued, commanding the company to restore *the approaches* to their former width. *Attorney General v. The Birmingham and Gloucester Railway Company*, 11 Q.B. 325, and see *The Clarence Railway Company v. The Great North of England Clarence and Hartlepool Junction Railway Company*, 3 Railway Cases, 605, 14, L.J., N.S. 137.

The width of the bridges need not exceed the width of the road in certain cases.

LI. Provided always, that in all cases where the average available width for the passage of carriages over any existing (a) roads within fifty yards of the place of crossing the same is less than the width herebefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such road, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet ; provided also that at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound at their own expense, to increase the width of the bridge to such extents as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or its maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway.

(a) “ Existing ” means existing at the time a road is in possession of by the company, and not at the time of the passing of the act. *Attorney General v. The London and Southampton Railway Company*, 1 Railway Cases, 284.

LII. Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered or for which another road shall be substituted shall be steeper than the inclination herein-before required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted. (a)

Existing inclinations of roads crossed or diverted need not be improved.

(a) As to the mode in which the inclination of substituted roads has been calculated, see *Reg. v. London and Birmingham Railway Company*, 1 Railway Cases, 325. *Reg. v. The Birmingham and Gloucester Railway Company*, 2 Railway Cases, 695; 2 Q. B. 51. N. This clause, however, seems to obviate the difficulties which were raised in these cases.

LIII. If, in the exercise of the powers by this or the special act granted, if it be found necessary to cross, cut through, raise, sink or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be. (a)

Before roads interfered with, others to be substituted.

(a) *As convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.*] This section cannot override the former ones which specify the maximum height and dimensions of which a bridge need be made; if therefore, a private road of fifty feet wide be crossed, cut through, &c., it can in no case be necessary to make its width under or over a

bridge more than twelve feet. This maximum, however, will be construed to apply only to the bridge itself, and not to the approaches (if the road be carried over the bridge). Thus where an act directed that when any turnpike carriage road should be carried over a railway, the bridge should be of the clear width of fifteen feet within the bridge, and by a subsequent regulation, where a carriage or horse road should be cut through, if taken, the company should cause another good road to be made instead thereof, as convenient for passengers and carriages as the former: the company did so, and erected a bridge to carry it over the railway. The road was forty feet wide and the substituted one was only seven, less convenient for driving sheep and cattle. The bridge was thirty-three feet, but it was continued by high walls and parapets to the distance of one hundred feet, and the width of the road on the bridge and parapets was only sixteen feet: it was held, that the bridge being narrower was not as convenient as the former, and that the company had not made a good and sufficient road within the meaning of the act intending it to be as convenient for passengers and carriages, and that although the bridge was of the maximum width required by the act for bridges, the company had no right to contract the road by the wings beyond the span of the bridge. *Reg. v. The L. & Birmingham Railway Company*. 1 Railway Case, 302.

If the company do not make such good and sufficient road, they may be compelled to do so, by an injunction, instead of that which they have stopped up, the court may order modes of compelling them to do so. In the case of *Reg. v. The L. & Birmingham Railway Company*, they may be indicted in the common form for obstructing a public highway, and unless they can show to the jury that the road they have made is a sufficient one, and as convenient for passengers and carriages, or as nearly so as may be, the verdict must be against them. *Reg. v. Scott, and others*. 187. 3 Q. B. 543.

Or, a mandamus may be obtained compelling the company to make another good and sufficient road to be set out, as convenient for passengers and carriages, or as nearly so as may be, specifying particulars with regard to the road. *Reg. v. London and Birmingham Railway Company*. 1 Railway Case, 317.

Application may also be made to the Court for an injunction, restraining the company from doing any act which would cause damage to a road, and even compelling them to do it, by the indirect process of forbidding them from doing the contrary. Thus where a company, whose charter contained a clause precisely similar to clause 53, cut the road without complying with its provisions,



cellor granted an injunction restraining them from further cutting the road, and from continuing to stop it up ; it appearing, however, that the road would be sooner restored by allowing them to complete their works, than by enforcing the terms of the order, the Lord Chancellor suspended the injunction, with the assent of the plaintiffs, to give them time to do so. (In this case it was held that individuals who suffer a special damage from a public nuisance, may sustain a bill to be relieved therefrom, without the attorney-general being a party to the suit.) *Spencer and another v. The London and Birmingham Railway Company*, 1 Railway Cases, 159. The London and Brighton Railway Act has a section (the 25th) precisely similar to section 53 of this act : its 28th section orders that sufficient gates, &c. be provided where roads are crossed on a level to be regulated in a certain manner ; sections 31 and 32 prescribed the dimensions and requisites of bridges carrying the roads over the railway, or the railway over roads. A landowner filed a bill against the company, stating, amongst other things, that the company had given him notice in writing of the land they should require, and identified the same on a map or plan thereto annexed. That the plaintiff caused a statement in writing to be given to the company, expressing his willingness to sell and convey the land so required, and to accept a sum therein mentioned as compensation for the damage which might accrue from the same being taken ; and in such notice the sum mentioned was stated to be without prejudice to any compensation, claim or power to which the plaintiff was entitled, or possessed, under the railway act, or otherwise, by reason or in consequence of any roads or ways being intersected, destroyed, altered, &c., or for any other matter or thing whereby, as to such roads or ways, the company should not comply with the provisions of the act. That the value of the lands required by the company was assessed by a jury, and the company had since taken possession thereof. That a certain road ran between the lands of the plaintiff from east to west, and had been from time immemorial used by the plaintiff and his predecessors for various agricultural and other purposes, that the company intended to carry the railroad across the said road, to intersect it, and take and occupy two hundred feet of it, thereby preventing plaintiff and his tenants from passing along the said road ; and instead of making a communication for the use of the plaintiff and his tenants, by a bridge or otherwise in a direct line connecting the said ends of the road or any road or way as convenient as the present, the company intended to stop up the road and make a road in lieu thereof by a circuitous route of six hundred yards and in other respects inconvenient. The company replied, that on the plan which was submitted to the jury, when the value of the plaintiff's land and compensation were assessed, a new road was

marked out as intended to be made in lieu of the old one, and the quantity of land required for such new road was valued by the jury and paid for by the company; that the entire quantity of land which had been valued and paid for was sixteen acres, four perches, which could not be made up without including the soil of the old road way. That the damage which the plaintiff's property would receive by the proposed change of road was estimated by the jury: that the expense of carrying the road under the railway by a tunnel would amount to 14,298*l.*: that the land contiguous to the road having been selected for a terminus station rendered the communication by gates on the level too dangerous to be adopted; that having regard to the 31st and 32nd sections of the act, the mode of carrying the road over the railway by a bridge was impracticable, and the company did not intend to stop up the road in question until they should have opened the intended new road. By affidavit in reply it was deposed that the jury were only required to value the land coloured green on the plan submitted to them and that the said road was not so coloured. That the expense of a tunnel under the railway would only amount to 5,173*l.* Under these circumstances the Vice Chancellor refused to interfere at that stage of the proceedings, and ordered the motion to stand over until the company should have completed their proposed road, with liberty to apply generally. On appeal however, the Lord Chancellor said it appeared to him that the situation in which the Vice Chancellor's order left the matter was injurious to both parties; the company were left in the dark as to what might be the construction of their Parliamentary powers, and might finish the new road according to their own views, without any clue or motion whether, when finished, it would be a substitution for the old one: on the other hand the plaintiff might find it not to be in his power to apply for the intervention of the court in sufficient time to raise the question whether he is entitled or not to its protection. The proceedings of the company when they began to deal with the road might be so rapid as to destroy its original character, and to reduce it to a state from which it would be impossible to restore it to its original condition. He proceeded to say, "I am told that there are other modes of proceeding—other remedies which the plaintiff may adopt, and therefore it is submitted to me that this Court ought to refuse to exercise its jurisdiction. Now, I consider that there cannot be a more useful exercise of the jurisdiction of the Court than in interfering to ascertain the rights between parties circumstanced as in this case. I look at the great powers which are necessarily given to these companies; the variety of interests with which these powers may interfere, if not strictly exercised according to the provisions of the acts; the necessity of immediate interposition; the injury to both parties, if there be not a jurisdiction constantly open by

which their respective rights may be ascertained. My predecessors have established the authority of this Court to interfere in these cases, and I certainly feel it my duty not to repudiate a jurisdiction, the exercise of which I believe to be most essential to the interests of the numberless persons who are, in some way or other, affected by these great works which are now so universally being carried on throughout the country."

Having stated his reasons for deciding that the jury had not assessed the value of the road in dispute, his lordship proceeded, "The question of inconvenience to the company is a matter quite immaterial. I have no power, and if I had I should not exercise it, to deprive one party of what he is entitled to because it is inconvenient to another party. The company may or may not have taken proper measures to secure to themselves those powers which are necessary for the sake of convenience in carrying their works into effect: if they have not, it is their misfortune. These companies procure ample powers to be bestowed upon them; but it not unfrequently happens, that, in the course of their works, they find that they have not powers sufficient for perfecting all they contemplated. When that is the case they must either make what bargain they can with the persons whose rights are adverse to them, or they must again apply to Parliament to have their powers enlarged." His lordship granted an injunction against any interference with the road for the present, the plaintiff undertaking to bring an action against the company; and the company admitting, for the purposes of the action, that they had taken the old road; the plaintiff admitting that the substituted road was in effect completed, so as, if it were a substitution, to try the question whether it were a proper substitution.

It was submitted by the counsel for the company that the form of action would not inform the company what kind of a road they were bound to make. The Lord Chancellor: "I am not about to direct an action to try what sort of road the company are to make. The question before me is, whether the proposed road is such as, under the act, entitles them to take the old road." *Kemp v. London and Brighton Railway Company*, 1 Railway Cases, 495.

The following case, though decided on a section of an act somewhat more comprehensive than this, is not altogether inapplicable. An act provided that "in all cases in which, in the exercise of any of the powers thereby granted, any part of any carriage, horse, or foot road, railway or tramroad, quay, wharf, slope, or other communication, either public or private, shall be found necessary to be cut through, raised, sunk, taken, or so much injured as to be impassable or inconvenient for passengers, cattle or carriages, or for the transporting, conveying, loading, shipping, or depositing of any goods and merchandize, the company shall, at their own expense, before any such road,

quay, wharf, or other communication, shall be taken, or injured as aforesaid, cause another good road, quay, wharf, or other communication, to be made instead thereof, as convenient for passengers the transporting, conveying, &c. of goods and merchandise, the road, quay, wharf, or other communication, through, taken, or injured as aforesaid, or as near may be." (A subsequent section prescribed the obtaining compensation for damages consequent on the exercise of the powers of the act.)

The railway was made to pass in front of a wharf to the plaintiff, between it and low-water mark, and the frontage from the water, thereby causing inconvenience and risk to the plaintiff in loading and unloading vessels. It was held that the injury mentioned in the first section was not confined to a *bodily* injury only; but that the wharf was injured within the meaning of that section, and he was entitled to have a new wharf erected for his company, and was not bound to apply for compensation under the compensation clause. *Bell v. The Hull and Selby Railway Company*, 2 Railway Cases, 279. See *the London Railway Company, v. Blake and others*, 2 Railway Cases, 280. (This was an action on the case.)

Penalty for not substituting a road.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall be liable to pay twenty pounds for every day during which the substituted road shall not be made after the exercise of the powers shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, or other person having the management of such road, or to the owner of a public road, and shall be applied for the repair thereof, or in case of a private road the same shall be paid to the owner thereof, and every sum so paid shall be recoverable with costs by action in the superior courts.

Party suffering damage from interruption of road to recover in an action on the case.

LV. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the exercise of the right, it shall be lawful for such party to recover the amount of such special damage from the company.

with costs, by action on the case in any of the superior courts, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same (s).

(a) The remedy here given does not appear to be a bar to the other forms of remedy discussed in the note to the last clause. In the case of *Collinson v. Newcastle and Darlington Railway Company*, 1 C. & Kir. 546, Mr. Justice Creswell held that the word "owner" meant the reversioner and not the tenant, and accordingly dismissed a tenant suing under a clause identical with this. A new trial, however, has since been granted. As to the meaning of the word "owner," see the *Constables &c. of Chorlton v. Walker*, 12 L. J., N. S. Exc. 88. (under a local act); *Osier v. Latham*, 13 Id. Canc. 149, (on a question of title); *Dobson v. Jones*, 13 Id. C. P. 128, (under the Reform Act); the word does not imply that the party is also an occupier, 3 Q. B. 449. On the subject of right of way, see Co. Lit. 56 a; Comyn's Digest, Chimin. D.; *Baker v. Hill*, 2 Eock, 535; on wayleave, see *Dand v. Kingscott*, 2 Railway Cases, 27.

As to the form of remedy for damage done to easements over land which a company have been empowered by act of Parliament to purchase, where there are no special provisions relative to them, see *Thickness v. The Lancaster Canal Company*, 4 M. & W. 472.

LVI. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, un-

Period for restoration of roads interfered with.

less the trustees or parties having the management of the road to be restored by writing under their hands and seals, or the consent of the majority of the trustees, consent to an extension of the period, in any such case within such extended period; and (that if the road be a turnpike road, within six months; and if the road be not a turnpike road, within twelve months).

Penalty for failing to restore road.

LVII. If any such road be not so restored or substituted road so completed as aforesaid within the periods herein or in the special act fixed in that behalf, the company shall forfeit to the trustees, commissioners, surveyor, or other person in the management of the road interfered with by the company, if a public road, or if a private road, five pounds for every month of the expiration of such periods respectively in which such road shall not be so restored or the road completed; and it shall be lawful for the justices by whom any such penalty is imposed to lay the whole or any part thereof to be laid out in cutting the work in respect whereof such penalty is incurred.

Company to repair roads used by them.

LVIII. If in the course of making the road the company shall use or interfere with any such road, the company shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, the question shall be referred to the determination of the justices; and such justices may direct the repairs to be made in the state of such road, in respect of the damage done by the company, and within such time as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per annum; and such justices shall seem just; and such penalty shall be paid to the surveyor or other person in the management of the road interfered with.

public road, and be applied for the purchase of a private road the same to the owner thereof; Provided always, enquiring any such question with regard to the said justices shall have regard to the full allowance for any tolls that may be paid by the company on such road in the using thereof.

When the company shall intend to apply for leave of two justices, as herein-before provided, to authorize them to carry the railway across any other than a public carriage road on the land, at least, fourteen days, at least, previous to the petty sessions at which such application is to be made, cause notice of such application to be given in some newspaper circulating in the county, and also to be affixed upon the parish church of the parish in which the crossing is intended to be made, or if there be no church, some other place to which notices are usually given; and if there appear to any two or more justices acting for the district in which such crossing is proposed to be made, that the proposed crossing thereof is situate, and in petty sessions, after such notice as shall be given, and that the railway can, consistently with a view to the public safety and convenience, be carried over such highway on the level, it shall be the duty of the justices to consent that the same may be carried over accordingly.

Proceedings on application to justices to consent to level crossings of brideways and footways.

Where any party shall feel aggrieved by the determination of such justices upon any such application, it shall be lawful for such party, subject to the like conditions as are provided in the case of appeals in matters of penalties and forfeitures, to appeal to the next petty sessions of the county or place in which the matter shall have arisen; and it shall be the duty of the justices in such quarter sessions, upon

Appeal against the determination of the justices.

the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

LXI. If the railway shall cross any highway other than a public carriage way on the level, the company shall, at their own expense, make, and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

LXII. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fences, gates or stiles as they are herein-before required to make, shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent, or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by the justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied in such manner and by such person as they think fit, in executing the work in respect whereof the penalty was incurred.



[. If the commissioners or trustees of any road, or the surveyor of any highway, and danger to the passengers on such road of horses being frightened by the engines or carriages travelling upon the road shall be lawful for such commissioners, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade for an order in that behalf directed thereto; and if it shall appear to the Board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of the road, it shall be lawful for them, if they shall be satisfied that such works are necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such order to require the company to execute such works within a certain time after the service of such order, and to be appointed by the said Board (a).

*Screens for Turnpike Roads.*

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Screen for roads to be made if required by the Board of Trade.

clause, now always inserted in Railway Acts, obviating a danger for which there was before no redress. *Rex. v. ...* p. 28. See 9 & 10 Vic., c. 105, in Addenda, sub-Board of commissioners for the railway branch of the ...

Where by any such certificate as aforesaid a company shall have been required to execute such work in the nature of a screen, they shall execute and complete the same within the time pointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain unexecuted beyond the period so appointed for completion; and it shall be lawful for the justices from any such penalty is imposed to order any or any part thereof, to be laid out in the work in respect whereof such penalty was imposed.

Penalty for failing to construct.

Where, under the provisions of this or the *Construc-*

*tion of  
Bridges.*

Justices to  
have power  
to order  
repair of  
bridges, &c.

special act, or any act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two or more on the application of the surveyor of roads or two householders of the parish or district in which the work may be situate, complaining that any such work is out of repair, after not less than ten days notice to the company, to order the company to put the same into complete repair within a period to be determined for that purpose by such justices; and if they fail to comply with such order they shall be liable to a penalty of five pounds for every day that they fail so to do, and it shall be lawful for the justices by whom such penalty is imposed to order the whole or any part thereof to be applied, in such manner as they think fit, to such persons as they think fit, in putting such work into repair.

Board of  
Trade em-  
powered to  
modify the  
construc-  
tion of  
certain  
roads,  
bridges, &c.  
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pliance with  
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nient.

LXVI. And whereas expense might be avoided, and public convenience promoted, by reference to the Board of Trade upon the construction of public works of an engineering nature with the railway, where a strict compliance with the provisions of this or the special act might be impossible, or attended with inconvenience to the public, and without adequate advantage to the railway, it enacted, that in case any difference in respect of the construction, alteration, or restoration of any such bridge, or other public work of an engineering nature, shall arise between the company and any commissioners, surveyors, or other persons having the control of or being authorized by law to execute the construction of such road, bridge, or other work, it shall be lawful for either party after giving seven days' notice in writing of their intention to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge,

and it shall be lawful for the Board of Trade, shall think fit, to decide the same accordingly, authorize, by certificate in writing, any arrangement or mode of construction in regard to any road, bridge, or other work which shall appear either to be in substantial compliance with the provisions of this and the special act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work and after any such certificate shall have been granted by the Board of Trade, the road, bridge, or work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of the special act: provided always, that no certificate shall be granted by the Board of Trade unless they shall be satisfied that existing rights or interests will not be injuriously affected hereby. (a)

Board of Trade, it will be observed, have power only to grant a certificate containing certain directions, but not to enforce the performance of them, nor is any such power given to justices. The remedies, then, for the non-performance of works according to the certificate are the same as those for non-performance of works according to the provisions of the special act, the certificate being the thing to be considered by the courts instead of the act.

The courts have, in many cases, refused to decide questions of construction of a legal nature where there was room for any doubt as to the meaning of the words of the act; where, however, the intention was manifested a certain thing to be done in unmistakeable terms, their rule has been to allow no difficulties whatever to stand up as an excuse for non-compliance. *Webb v. Great Northern Railway Company*, 4 Myl. & Cr. 120; *London and Birmingham Railway Company*, 1 Railway Cases, 317; *Kemp v. London and Brighton Railway Company*, 1 Railway Cases, 495. Unquestionably this rule, in many cases, pressed hardly upon companies who have been obliged to do what involved extreme inconvenience and great expense, and even, according to their shewing at least, a breach of contract. *Reg. v. Scott*, 3 Q. B. 543; 3 Railway Cases, 187; *Lancaster and Leeds Railway Company*, and *Reg.*

v. *Birmingham and Gloucester Railway Company*, cited in, to clauses 49 & 50. If any such difficulties should now be proposed to by the company, the Courts would probably refer parties to the Board of Trade, if no application should previously have been made to them. As the Board of Trade, however, may or may not attend to the application, and has no power to enforce their certificate, the power of application to them would not seem to be such a sufficient remedy as to deprive parties of their right to a mandamus.

What might or might not be considered "a public work of an engineering nature" may, perhaps, be a question of difficulty.

Clause 54 (*ante*, p. 62) constitutes a jury judges of matters which, by this section, may be referred to the Board of Trade; the remedy there given is clearly independent of the power to apply to the Board of Trade; a certificate, however, obtained from the Board of Trade would be a good answer to the action. There seems no reason why, pending the action, the company should not, if they please, give the required notice of reference to the Board of Trade, and plead their certificate, if necessary, " *puis darrein continuance*."

Authenti-  
cation of  
certificates  
of the Board  
of Trade,  
service of  
notices, &c.

LXVII. And be it enacted, that all regular certificates, notices, and other documents in which it is purporting to be made or issued by or by the authority of the Board of Trade, and signed by an officer appointed for that purpose by the Board of Trade, shall for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without the production of proof of the authority of the person signing the certificate or of the signature thereto, which matters shall be presumed until the contrary be proved; and the service of any such document, by leaving the same at the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special act to be given to or produced before the Board of Trade shall be delivered or sent by post addressed to the office of the Board of Trade in London.

*Works for*

And with respect to works for the accommoda-

lands adjoining the railway, be it enacted as follows:—

*Protection  
and Accom-  
modation of  
Lands.*

---

LXVIII. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say),

Such, and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

*Gates,  
bridges, &c.*

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

*Fences :*

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed:

*Drains :*

**Watering  
places.**

Also proper watering places for cattle &c. on account of the reason of the railway the cattle of an occupier occupying any lands lying near thereto and being deprived of access to their former watering places; and such watering places shall be made as to be at all times as sufficient to supply with water as theretofore, and as the railway had not been made, or as near as may be; and the company shall make necessary watercourses and drains for the purpose of conveying water to the said watering places. (a.)

Provided always, that the company shall not be required to make such accommodation work in a manner as would prevent or obstruct the use or using of the railway, nor to make any accommodation works with respect to which the owners or occupiers of the lands shall have agreed to make, and shall have been paid compensation in respect of making them.

(a) The York and North Midland Railway Act 1845 contained a similar clause as to the making of watering places, and when it had passed, the Company by indenture agreed to pay Sir W. M. for damage to his estate, and that whenever any lands &c. belonging to him should be intersected by the railway, the different parts adjoining should be thrown together and be levelled, and that they should at their own expense erect sufficient fences, drains, gates, stiles, and such other works as might be necessary for the re-dividing of fields &c. when intersected. The 5000*l.* was paid, and Sir W. M. by his indenture had given the company notice to make certain drains, crossings, gates, and ponds. It was held that the company was not bound to do so, and the proceedings were no answer to a writ to make watering-places under their act. *Reg. v. The North Midland Railway Company*, 14 L. J., N. S., 1849. This judgment has been reversed, but merely on the ground that the form of the writ was erroneous. See *The North Midland Railway Company v. The Queen*, (1851) 7 Law Times, 346.

**Differences  
as to ac-  
commoda-**

LXIX. If any difference arise respecting the mode or number of any such accommodation

sions or sufficiency thereof, or respecting the execution works to be settled by justices.  
g thereof, the same shall be determined by  
es; and such justices shall also appoint the  
in which such works shall be commenced  
ted by the company.

If for fourteen days next after the time Execution of works by owners on default by the company.  
by such justices for the commencement of  
works, the company shall fail to commence  
as, or having commenced shall fail to  
ligently to execute the same in a sufficient  
; shall be lawful for the party aggrieved  
ilure himself to execute such works or re-  
the reasonable expenses thereof shall be  
the company to the party by whom the  
so have been executed: and if there be  
e about such expenses, the same shall be  
two justices: Provided always, that no  
r or occupier or other person shall obstruct  
the railway, or any of the works con-  
erewith, for a longer time, nor use them  
ier manner than is unavoidably necessary  
ecution or repair of such accommodation

If any of the owners or occupiers of lands Power to owners of land to make additional accommodation works.  
y such railway shall consider the accom-  
works made by the company, or directed  
stices to be made by the company, insuffi-  
ne commodious use of their respective lands,  
lawful for any such owner or occupier, at  
at his own expense, to make such further  
that purpose as he shall think necessary  
ll be agreed to by the company, or, in case  
ce, as shall be authorized by two justices.

If the company so desire, all such last- Such works to be constructed under the superin-  
accommodation works shall be constructed  
superintendence of their engineer, and  
to plans and specifications to be submitted

tendence of  
the com-  
pany's  
engineer.

to and approved by such engineer; nevertheless the company shall not be entitled to require, and no plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that which might be selected, should be executed in a more economical manner than that adopted in similar cases by the company.

Accommo-  
dation  
works not  
to be re-  
quired after  
five years.

LXXIII. The company shall not be compelled to make any further or additional accommodation for the use of owners and occupiers of land adjoining the railway after the expiration of the period, or if no period be prescribed, after a period of five years from the completion of the works, and the railway shall remain open for public use.

Owners to  
be allowed  
to cross  
until ac-  
commoda-  
tion works  
are made.

LXXIV. Until the company shall have made such bridges or other proper communications as may be required under the provisions herein, or in any act, or any act incorporated therewith, and until such works have been required to make between lands separated by the railway, and no longer, the owners and occupiers of such lands, and any other persons having a right of way shall be affected by the want of such communication and their respective servants shall at all times freely pass and repass, with carriages, horses and other animals, directly (but not circuitously) across the part of the railway made in or through their respective lands, solely for the purpose of passing and repassing the same lands, or for the exercise of their right of way, and so as not to obstruct the traffic along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company agreed to receive compensation for or on account of any such communications, instead of such communications being formed, such owner or occupier, claiming under him, shall not be entitled so to obstruct the railway (a).



This section gives the owner or occupier of adjoining land, power to cross the railway at any point, nor is it necessary exercise of such right for any length of time, that he should give the company notice to make the proper communication. *Grand Junction Railway Company v. White*, 8 M. & W. See *The Monmouthshire Canal Company v. Summersford*, 1 M. & R. 614.

to what may be considered such an *arrangement* with the company, for or on account of such communications, as to deprive the owner of the right of crossing. See *Manning v. The Eastern Railway Company*, 12 M. & W. 237, where it was held that the owner of lands severed by a railway, having pre-claim for compensation from the company, on the foot-bridge there was to be a total separation of the land, without communication being made; and received from the company the amount awarded to him by a jury, had thereby forfeited the power given by a clause identical with this to cross the railway, and in so doing was a trespasser. See *Reg. v. Jackson and North Midland Railway Company*, 14 L. J., 1 B. 277.

A company make a covenant with a landowner, binding him to make certain communications for him, the Court will, after request and refusal, decree the specific performance of it. *Storer v. The Great Western Railway*, 2 You. & Coll. 48; 3 Railway Cases, 106.

V. If any person omit to shut and fasten the gates set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands as soon as he, and the carriage, or other animals under his care have passed the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

Penalty on persons omitting to fasten gates.

VI. And be it enacted, that this or the next act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from putting down, either upon their own lands, or the lands of other persons, with the consent of the owners or occupiers, any collateral branches of railway to communicate with the railway, for the purpose of conveying carriages to or from or upon the railway, and subject to the provisions and restrictions contained in an act passed in the sixth year of the reign

*Branch Railways.*

Power to parties to make private branch railways communicating with the railway.

5 & 6 Vict.  
c. 55.

of her present Majesty, intituled *An Act for the regulation of Railways, and for the Conveyance of troops*; and the company shall if required at the expense of such owners and occupiers and persons and subject also to the provisions of the last mentioned act, make openings in the rails, such additional lines of rail as may be necessary for effecting such communication, in places where communication can be made with safety to the public and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other monies for passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions; (that is to say,)

Restrictions and conditions.

No such branch railway shall run parallel to railway:

The company shall not be bound to make such openings in any place which they have set apart for any specific purpose in which such communication would interfere, upon any inclined plane or bridge, nor in a tunnel:

The persons making or using such branch railways shall be subject to all bye laws and regulations of the company from time to time made with respect to passing upon or crossing a railway, and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time, need may require, to renew the offset points and switches according to the most approved plan adopted by the company, and under the direction of their engineer. (a)

(a) The 5 & 6 Vict. c. 55, s. 12, enacts, that whereas power is given by the said Act for the regulation of Railways, of laying down branch lines opening into the ledges or flanks of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons, drawn by locomotives,

ies, or by other mechanical or animal power, and also form roads or railways across existing railways on a e been given by various acts relative to railways, to the occupiers of lands adjoining the railway, and to other ith their consent; and whereas experience has shewn exercise of such powers without limitation, would in e be attended with danger to the public using such e it therefore enacted, that if in the case of any rail- hich passengers are conveyed by steam or other me- wer, it shall appear to the lords of the said com- trade) that such power as aforesaid, cannot be so without seriously endangering the public safety, and rangement may be made with a due regard to the hts of property, it shall be lawful for the lords of nmittee, to order and direct that such powers shall rcised subject to such conditions as the lords of the ittee shall direct: provided always, that no railway sidered a passenger railway, if two-thirds or more s annual revenue of such railway, shall be derived riage thereon of coals, ironstone, or other metals

observed, this section, which is the only section in act referred to, gives a power to the Board of cur- ights of landowners, but none of extending or en- n. In case of the company's refusing to allow a way to be made, a mandamus would, doubtless, be affidavits shewing distinctly, that no damage could e public, or injury to the railway, or inconvenience c. See *Sirhowy Tramroad Company v. Jones*. *Jones*, 3 A. & E. 640. As to the interference of roads with roads, see *Rex v. Morris*, 1 B. & Ad.

er here given of making railways, extends to using engines upon them. *Bishop v. North*, 11 M. & W. way Cases, 459, and is a continuing power to "all upiers, and other persons," for all time: *ib.*, and *Railway Company v. Dixon*, 3 Railway Cases, 273. *v. Bailey*, 2 Myl. & K. 517.

se seems completely to obviate certain difficulties *Winkland Railway Company v. Dixon*.

ith respect to mines lying under or near *Working of  
Mines.*  
y, be it enacted as follows:

II. The company shall not be entitled to of coal, ironstone, slate or other minerals Company not to be entitled to minerals.  
y land purchased by them, except only  
thereof as shall be necessary to be dug or

carried away or used in the construction of works, unless the same shall have been expressly purchased; and all such mines, excepting as said, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have expressly named therein and conveyed thereby.

(a) As to the effect of a reservation of mines, together with way-leave and stay-leave to and from the said mines, liberty of sinking and digging pit and pits, see *Dand v. Kcote*, 2 Railway Cases, 27.

Mines lying near the railway not to be worked if the company be willing to purchase them.

LXXVIII. If the owner, lessee, or occupier of mines or minerals lying under the railway, or of the works connected therewith, or within prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to the owner, lessee or occupier thereof, then he shall be allowed to work or get the same; and if the company, and the owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

If company be unwilling to purchase, owner may work the mines.

LXXIX. If before the expiration of such time as the company do not state their willingness to treat with such owner, lessee or occupier for payment of such compensation, it shall be lawful for him to work the said mines or any part thereof in which the company shall not have agreed to make compensation, so that the same be done in a manner

and necessary for the beneficial working and according to the usual manner of working mines in the district where the same shall be; and if any damage or obstruction be occasioned to the railway or works by improper working mines, (a) the same shall be forthwith removed, as the case may require, and the damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith made, or if the company shall so think fit, without any notice being given for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to do the same, and recover from such owner, lessee, or occupier, the expense occasioned thereby, in any of the superior courts.

*proper working, &c.*] The question what is or is not proper working, cannot, of course, be considered with reference to the railway, or the maxim, "sic utere tuo ut lædas." The neglect of the company however, to offer compensation, will also be considered when there is occasion of injury to their works.

It is provided, that the canal company should not be liable for purchasing lands for making a canal, to any coal owner under the same, but that such mines should belong to the persons as would have been entitled to them if the canal had been made; but it required the owners to give notice to the company of their intention to work their mines within ten yards of the canal, and that the company might stop the further working of them, and give compensation to the owners; it was held, that the right to work within ten yards was left as before the notice given by them to the company, the latter did not forfeit their rights; and that the canal being damaged by the approach of the mine, after such notice and non-action lay against the coal-owner for such injury, occasioned by the default of the company in not purchasing the land. *Wyerley Canal Company v. Bradley and others*, 7

It contained clauses, providing that the owner of a mine within a certain prescribed distance of a canal, desirous of working it, give a certain notice to the company, who were empowered to inspect it, to determine what minerals might be got at without prejudice to

the canal, &c.; and in case of the company neglecting to inspect, the mines were permitted to be worked within the scribed limits, if, on inspection, the company should refuse to allow the mines to be worked, they should pay compensation.

Another clause provided, that nothing in the act contained should defeat the right of any owner of lands or grounds upon, or through which the canal, &c., should be made, to mines lying within or under the lands or grounds to be set apart or made use of for such canal, but all such mines were reserved to such owners respectively; and that it should be lawful for such owners, subject to the conditions therein contained, to work all such mines, *provided that in working such mines no injury be done to the said navigation.* It was held that this proviso was to be construed with some qualification, viz., *as importing that the party working the mines was to do no unnecessary damage to the navigation, or no extraordinary damage by working the mines out of the usual mode;* and therefore where notice had been given by the lessee of a mine, of his intention to work the same under a reservoir belonging to the canal company, and the latter had not purchased his rights within the time limited by the act, that the lessee was entitled to work the mine under such reservoir, in the usual and ordinary mode, and the reservoir having been damaged by reason of such working by the lessee, that no action was maintainable by the company against him for such damage. *The Dudley Canal Navigation Company v. Grazebrook*, 1 B. & Ad. 59. See *Reg. v. Leeds and Selby Railway Company*, 3 A. & E. 683. *Barnsley Canal Company v. Twibell*, 22 J., Ch. 434.

#### Mining communications.

LXXX. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessors, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water-levels through the mines, measures or strata, the working whereof shall be prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but such airway, headway, gateway, or water level shall be of greater dimensions and section than the p

ensions and sections, and where no dimensions be described not greater than eight feet eight feet high, nor shall the same be cut upon any part of the railway or works, injure the same, or to impede the passage

*vented as aforesaid by reason of apprehended railway.]* This section clearly refers to section company refuse to purchase or pay compensation, and, it is presumed, enable mine owners to make applications for themselves, and section 81 would recover compensation for them from the com-

The company shall from time to time owner, lessee, or occupier of any such land so as to lie on both sides of the such additional expenses and losses as incurred by such owner, lessee, or occupier of the severance of the lands lying over by the railway, or of the continuous such mines being interrupted as aforesaid, on of the same being worked in such land under such restrictions as not to prejudice the railway, and for any minerals severed by the company which cannot be by reason of making and maintaining the land if any dispute or question shall arise between the company and such owner, lessee, or as aforesaid, touching the amount of such expenses, the same shall be settled by arbitration.

Company to make compensation for injury done to mines :

action seems to apply both to cases where the companies themselves obstructed the working of a mine under land also where the company not having interfered with compensation, the miner is prevented by the railway from working his mine as he otherwise would.

[. If any loss or damage be sustained by owner or occupier of the lands lying over any such land working whereof shall have been so prejudiced and also for any airway or other work made

necessary  
by the  
railway.

- vented as aforesaid, (and not being the owner, or occupier of such mines,) by reason of the ~~m~~ of any such airway or other work as aforesaid, or any like work would not have been necessary be made but for the working of such mines ~~h~~ been so prevented as aforesaid, the company make full compensation to such owner or occupier the surface lands for the loss or damage so sustained by him (a).

(a) This section seems to apply only to where the company have interrupted the works of a mine, under clause 78.

Power to  
company to  
enter and  
inspect the  
working of  
mines.

LXXXIII. For better ascertaining whether such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any land through or near which the railway passes where any such mines are being worked or supposed to be, and to enter into and return from any such mines or the works connected therewith: and for that purpose it shall be lawful for them to use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked, or about so to be.

Penalty for  
refusal to  
inspect.

LXXXIV. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for each such refusal forfeit to the company a sum not exceeding twenty pounds.

If mines  
improperly  
worked, the  
company

LXXXV. If it appears that any such mines have been worked contrary to the provisions of this or any special act, the company may, if they think fit,



**may require means to be adopted for the safety of the railway.**

# Passengers and Goods on Railway.

**Company  
to employ  
locomotive  
power,  
carriages,  
&c.**

of passengers they are liable at common law, by indictment, for any obstruction in their road, or neglect by passengers may be injured or endangered. *National Navigation v. Parnaby and others*, 1 Railway Cases, 11 A. & E. 223 ; 3 P. & D. 162. *Reg. v. Bir-  
Gloucester Railway Company*, 3 Railway Cases,  
*yd v. Croydon Railway Company*, 4 Bing. N. C.

669. *Armitage v. Grand Junction Railway Company*, 6 C. 340. *Butterfield v. Forrester*, 11 East, 60. *Bridge v. Grand Junction Railway Company*, 3 M. & W. 244. If, by the degree of negligence or improper conduct complained of, the amount to felony, as where life is lost, the company, though fairly chargeable with some of it, cannot be indicted, but indictment must be preferred against their servants. *Reg. v. Birmingham and Gloucester Railway Company*, 3 R. Cases, 148.

Common carriers are persons who undertake to carry and hire all goods which may be entrusted to them, and not passengers only; *Middleton v. Fowler*, Salk, 282. *Bastwick v. Baxter*, Show, 81. *Lovett v. Hobbs*, 2 Show. 129. *R. v. Kneeland*, Cro. Jac. 330. *Aston v. Weaver*, 2 Esp. 149. Having, by their acts or otherwise, held themselves out in a public capacity to the public, have no right to refuse to carry goods of anybody offering to pay their ordinary charge, whether the carriage be full, or the risk sought to be imposed is extraordinary, or the goods be of a sort which they have not been in the habit of carrying; *Riley v. Horne*, 5 Bing. 217. *Edwards v. Sharratt*, 1 East, 604. *Jackson v. Rogers*, 2 Show. 149. and they are bound to convey safely all goods entrusted to them, or to make compensation to the owner for any loss of goods or damage they may have sustained from any cause whatever, except the acts of God, and the king's enemies, or the misconduct or negligence of the owner himself: e. g. as his concealing the nature of the articles when they are of a description very liable to damage, putting undue temptation to steal in the way of servants and the like. *Amies v. S. Str.* 128; 1 Taunt. 89. *Davies v. Garratt*, 6 Bing. 149. and to deliver them in as good a condition as they received them, *Golden v. Manning*, 2 Bl. Rep. 916, unless there is a special contract diminishing the liability, which a notice to the employer, either oral, written or printed, if there were no reason to suppose it had come to his knowledge, has been held to create. *Tyly v. Morrice*, Carth. 485, C. B. *Titchell v. White*, London Sitings, Str. 145. *Kerr v. Willan*, 6 M. & W. 150. *Nicholson v. Willan*, 5 East, 507. *Mayhew v. Willan*, 6 B. & C. 601. Such contract, however, does not exempt the carrier from answering for the consequences of gross negligence. *Brook v. Pickwick*, 4 Bing. 223. *Birkett v. Willan*, 2 E. 356. *Owen v. Burnett*, 4 Tyr. 143.

The Carriers' Act, however, (1 Wm. 4, c. 68) limited the responsibility of land carriers by enacting, that they shall not be liable for loss or injury to any gold or silver coin, gold or silver in a manufactured or unmanufactured state, precious jewellery, watches, clocks, time-pieces, trinkets (1 C. Marsh. 45) bills, bank-notes, orders, notes, or securities for the payment of money, stamps, maps, writings, title-deeds, paid

ings, pictures, gold or silver plate, or plated articles, (*Owen v. Burnett*, 4 Tyr. 143) china, silks, manufactured or unmanufactured, wrought up or not wrought up with materials, furs, (*Mayhew v. Nelson*, 6 C. & P. 59) or contained in any parcel when the value exceeds the sum, unless at the time of the delivery the value and nature of the article shall have been declared, and the increased rate of charge, to be notified in a notice so affixed in his office, which notice so affixed is supposed to have come to the knowledge of his employers. With respect to all articles not above enumerated, carriers are forbidden to limit their liability by affixing a notice, although the contract specially is reserved, that is to say, the affixing of a notice does not now create a special contract, even in the case of passengers as can be shewn to have seen it.

It is further provided, that carriers neglecting to affix a notice shall derive no benefit from the act. The act does not exonerate carriers from their common law liability to answer for the loss or damage occasioned by the felonious acts of their servants, nor does it exempt servants from answering for their neglect or mis-

conduct. It has been held that, notwithstanding this statute, the carrier is still answerable for gross negligence on his part, which occasioned a loss of property such as the act directs to be covered by insurance, even though the owner has neglected to insure it; the protection given to the carrier by the act, is substituted for the protection which he formerly derived from his common law, and the former, therefore, will not now protect him in a case in which the latter would not have been allowed to do so, in consequence of his own misconduct. *Owen v. Burnett*, 4 Tyr. 142, cited in the notes to *Coggs v. Bernard*, Leading Cases, vol. 1, pp. 102, 103. But see 2 Gale 6.

The proper form of action against a carrier, is generally assumpsit, although trover may, in some cases, be maintained. *Devereux v. Barclay*, 2 B. & Ald. 702. *Stephens v. Bartlett*, 4 Bing. 483; and the proper party to sue, is commonly the consignee of the goods, the law considering the carrier as his agent. *Dawes v. Peck*, 8 T. R. 330. *Dutton v. Tinsley*, 3 B. & P. 582. *Rex v. Meridith*, 2 Camp. 639. Leading Cases, 103,

the law concerning carriers having been thus briefly stated, it remains to cite some cases which have been decided relative to the liability of public companies in that

The Trent and Mersey Navigation Company being carriers, the Stourport and Manchester, were employed to carry

certain goods from Stourport and Manchester, to be forwarded to Stockport; they carried them to Manchester, and put them in a warehouse, in which they were destroyed by accidental fire, before they had an opportunity of forwarding them; under these circumstances they were held not answerable for the loss. *Garside v. The Proprietors of The Trent and Mersey Navigation*, 4 T. R. 581. The same company charged, and received for, cartage of goods to the consignee's house at Manchester from a warehouse there, where they were unloaded, but which did not belong to them; it was held they were answerable for the goods destroyed in the warehouse by an accidental fire, though they allowed all the profits of cartage to another person, and that circumstance was held to be no defence to the consignee. *Hyde v. Trent and Mersey Navigation*, 4 T. R. 389. See *Trent Navigation v. Wood*, 3 Esp. 256; 4 Doug. 287.

By the statute 3 Wm. 4, c. 34, the Grand Junction Railway Company are empowered to make a railway from Warrington to Birmingham; by section 154 they are empowered to regulate certain tonnage rates for all articles, matters, or things carried or conveyed on the railway; by section 156 the company become carriers themselves, and are authorized if they think proper to use engines, &c. to carry and convey upon the railway all such passengers, cattle, goods, wares, and merchandise, articles, matters, and things as shall be offered to them for that purpose, upon certain reasonable charges; by the 157th section, "no action, suit, or information, nor any other proceeding of what nature soever, shall be brought, commenced, or prosecuted, against any person for anything done or omitted to be done in pursuance of the act, or in the execution of the powers or authorities, or any of the orders made, given, or directed, in, by or under the act, unless fourteen days' previous notice in writing shall be given by the parties intending to commence or prosecute such action, &c., nor unless such action, &c. shall be brought within three months." And by the 215th section power to tender amends is given. Under the 156th section, the company become carriers themselves. An action against the company, (alleging them to be owners and proprietors of the railway) for not safely carrying and conveying some horses in their carriages on the railway, whereby one was killed, and others were injured. It was held that the company were not entitled to notice of action as for a thing done or omitted to be done, in pursuance of the act; and that notwithstanding they restricted their liability by any special contract, they were nevertheless subject to the liabilities of carriers at common law. At the trial there was contradictory evidence as to whether a ticket, which the company sought to limit their liability, had been delivered to the son of the plaintiff; and the learned judge left the jury to say, whether it was delivered to him or not.

that it was no misdirection in not directing them to find, whether it was read over and explained to him. *Palmer v. Grand Junction Railway Company*, 4 M. & W. 749; 7 Dowl. 232; and in an action against a Company, (whose act contained similar clauses) for not safely carrying the plaintiff, whereby he was injured, it was held they were not entitled to notice of action, as for a thing done or omitted to be done in pursuance of the act. *Corpus v. The London and Brighton Railway Company*, 13 L.J., N.S., Q. B., 133. 3 Railway Cases, 692; and see *The Kennet and Avon Canal Company v. The Great Western Railway Company*, 14 L.J., N.S., Q. B., 326. 4 Railway Cases, 90.

In an action against a Railway Company as common carriers, for refusing to carry and convey goods, the declaration averred, that "the plaintiffs were ready and willing, and then offered to pay the defendants such sum of money as they were legally entitled to receive, for the receipt and carriage and conveyance of the said goods, and all other charges whatsoever, to wit, the sum of 2l.; this was held sufficient on special demurrer, and that it was not necessary to make or aver a strict legal tender. *Pickford v. Grand Junction Railway Company*, 2 Railway Cases, 592; and see 3 Railway Cases; 538, the same case on the question of an injunction.

A Railway Company is bound to convey parcels, &c. safely, not only throughout their own line, but all branch lines connected with them. A parcel was delivered at Lancaster to the Lancaster and Preston Junction Railway Company, directed to a person in Derbyshire. The person who brought it to the station offered to pay the carriage, but the book-keeper said it had better be paid by the person to whom it was directed, on the receipt of it. The Lancaster and Preston Junction Railway Company were known to be proprietors of the line only as far as Preston, where the railway unites with the North Union line, and that afterwards with another, and so on into Derbyshire. The parcel having been lost after it was forwarded to Preston, it was held that the Lancaster and Preston Junction Railway Company were liable for its loss. It was said, "if a party brings a parcel to a railway station, knowing at the time that the Company only carry it to a particular place, and if the Railway Company receive and book it to another place to which it is directed, *prima facie* they undertake to carry it to that other place." *Muschamp v. Lancaster and Preston Junction Railway Company*, 8. M. & W., 421. See *Sims v. Chaplin*, 5 A. & E. 642. *Golden v. Manning*, 3 Wils. 429.

LXXXVII. It shall be lawful for the company Company from time to time to enter into any contract with any empowered to contract other company, being the owners or lessees or in pos-

with other  
companies.

session of any other railway, for the passage of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage of any other line of railway of any engines, coaches, waggons, or other carriages of the company, or shall pass over their line of railway, upon the payment of such tolls and under such conditions and restrictions as may be mutually agreed upon; the purpose aforesaid it shall be lawful for the respective parties to enter into any contract for the payment or apportionment of the tolls to be taken upon the respective railways.

Contracts  
not to affect  
persons not  
parties  
thereto.

LXXXVIII. Provided always, that no such contract as aforesaid shall in any manner alter, increase, or diminish any of the tolls which the respective companies, parties to such contract for the time being be respectively authorized to demand or receive from any person or any other company, but that all other persons or companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the railways, upon the same terms and conditions as if on payment of the same tolls, as they would have been in case no such contract had been entered into.

Company  
not to be  
liable to a  
greater ex-  
tent than  
common  
carriers.

LXXXIX. Nothing in this or the special Act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of the realm, stage coach proprietors and common carriers would be liable, nor shall it tend in any degree, to deprive the company of the protection or privilege which common carriers and stage coach proprietors may be entitled to; the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

whereas it is expedient that the com-  
 be enabled to vary the tolls upon the  
 s to accommodate them to the circum-  
 ne traffic, but that such power of vary-  
 ot be used for the purpose of prejudicing  
 particular parties, or for the purpose of  
 d unfairly creating a monopoly, either  
 of the company or of particular parties :  
 vful, therefore, for the company, subject  
 ons and limitations herein and in the spe-  
 ined, from time to time to alter or vary  
 the special act authorized to be taken,  
 he whole or upon any particular portions  
 y, as they shall think fit; provided that  
 s be at all times charged equally to all  
 after the same rate, whether per ton, per  
 rwise, in respect of all passengers, and of  
 carriages of the same description, and  
 propelled by a like carriage or engine,  
 over the same portion of the line of rail-  
 ie same circumstances; and no reduction  
 in any such tolls shall be made either  
 directly in favour of or against any par-  
 any or person travelling upon or using  
 a).

Power to  
vary tolls.

Tolls to be  
charged  
equally  
unlike like  
circum-  
stances.

it of a public company to take toll derived from  
 be considered as if it were a bargain between them  
 ; the terms of which are expressed in the act :  
 ' construction is, that any ambiguity in the terms  
 t must operate against them. Thus where a  
 ned on two levels, which were connected by a  
 . Upon the upper level there was no lock what-  
 ct of Parliament for making the canal, all per-  
 e at liberty to navigate thereon with boats, upon  
 ch rates and dues as should be demanded by the  
 exceeding the rates therein mentioned; and  
 ise the company were authorized to take certain  
 s for every ton of iron and other goods navigated  
 the canal, and which *should pass through any one*  
*locks*; and power was given to owners of adjoin-  
 ise pleasure boats on the canal without paying  
 ie same did not pass through any lock, and were

not used for carrying goods. It was held that this act gave the right to demand toll for boats navigating the upper level of the canal in which there were no locks. *Stourbridge Canal Company v. Wheeley*, 2 B. & Ad. 792; and see the late case *The Grantham Canal Company v. Hall*, 15 L. J., N. 1, Exc. 63. If the company do not make equal tolls, in conformity with the directions of the act, a mandamus will be granted, compelling them to do so. On this point, and on the interpretation of the powers to levy tolls, see *Reg. v. Leicestershire and Northampton Union Canal Company*, 3 Railway Cases, 1. *Rex v. The Grand Junction Canal Company*, 3 Railway Cases, 14, note. *Rex v. The Glamorgan Canal Company*, 16, note. It seems a passenger for a long distance may be charged more per mile than one for a short distance. *Attorney General v. Birmingham and Derby Railway Company*, 2 Railway Cases, 124.

It may be as well to state the following case somewhat at length, as illustrating what may be considered a reasonable charge, where the act gives no exact directions.

The Grand Junction Railway Act constituted the company common carriers, and empowered them to make such reasonable charges for the carriage and conveyance of goods and passengers as they might, from time to time, determine on. The act also authorized them also to fix the sums to be charged in respect of small parcels not exceeding 500 lbs. weight each. By 4 Wm. IV. c. 4, s. 19, they were empowered to carry passengers and goods on other railways, and to make such reasonable charges for such carriage as they should determine on. And by another act, the 3 Vict. c. 69, s. 26, it was enacted, that the charges by the former acts authorized to be made for the carriage of passengers or goods should be at all times charged equally, and after the same rate in respect of all passengers, goods, &c. conveyed or propelled by a like carriage or engine passing on the same portion of the line, and under the same circumstances. The company published a list of rates for carriage of merchandize, divided into seven classes, of which the lowest was 16s. and the highest 60s. per ton: and for "bales, hampers, or other packages, when they contained parcels or other packages or things under 112 lbs. weight, each directly consigned, or intended for different persons, or for more than one person," they imposed a charge of 1d. per lb. weight. It was held, that this was not a reasonable charge in the case of a package of above 500 lbs. weight, made up by a carrier, directed to one person, although containing a number of parcels under 112 lbs. weight each, consigned or directed to different persons.

The company also became carriers on the London and Birmingham line, and published a list of charges for the carriage of goods from Manchester to London, among which "Manchester



ks " were charged 3s. 3d. per cwt., or 65s. per ton. At the of this list was a notice, that " goods were brought to the on at Camden Town without extra charge," and that there " no charge for booking or delivery in London : " the com- y made an arrangement with C. & H., that the latter should y from the station at Camden Town, and deliver in London, such goods carried by the railway, and for so doing should ive 10s. per ton out of the entire charge of 65s. per ton. as held, that under these circumstances, the charge of 65s. per , when made to any other persons who were ready to receive r goods at the station at Camden Town, was both unrea- able and unequal. *Pickford v. The Grand Junction Rail- y Company*, 10 M. & W. 399. An injunction had been plied for in this case, but refused until the plaintiff had ublished his legal right by an action at law. See *Pickford v. he Grand Junction Railway Company*, 6 Law Times, 213. uly, 1844, and November, 1845.

XCI. And whereas authority has been given by How tolls  
various acts of Parliament to railway companies to to be calcu-  
demand tolls for the conveyance of passengers and lated where  
goods and for other services over the fraction of a railways  
mile equal to the toll which they are authorized to amalga-  
demand for one mile; therefore in cases in which mated.  
any railway shall be amalgamated with any other  
adjoining railway or railways, such tolls shall be cal-  
culated and imposed at such rates as if such amal-  
amated railways had originally formed one line of  
railway.

XCII. It shall not be lawful for the company at Railway to  
any time to demand or take a greater amount of toll be free on  
make any greater charge for the carriage of pas- payment of  
engers or goods, than they are by this and the special tolls.  
et authorized to demand; and upon payment of the  
olls from time to time demandable all companies  
nd persons shall be entitled to use the railway, with  
ngines and carriages properly constructed as by this  
nd the special act directed, subject nevertheless to  
e provisions and restrictions of the said act of the  
xth year of her present Majesty, intituled *An Act*  
*for the better regulation of Railways, and for the con-* 5 & 6 Vict.  
*veyance of troops*, and to the regulations to be from c. 55.

time to time made by the company by virtue of powers in that behalf hereby and by the special conferred upon them.

List of tolls to be exhibited on a board.

XCIII. A list of all the tolls authorized by special act to be taken, and which shall be exacted by the company shall be published by the same being painted upon one toll board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place at the stations or places where such tolls shall be made payable.

Milestones.

XCIV. The company shall cause the length of the railway to be measured, and milestones, posts, other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of a quarter of a mile from each other, with number marks inscribed thereon denoting such distances.

Tolls to be taken only whilst board exhibited and milestones set up.

XCV. No tolls shall be demanded or taken by the company for the use of the railway during a time at which the boards hereinbefore directed to be exhibited, shall not be so exhibited, or at which the milestones herein-before directed to be set up and maintained shall not be so set up and maintained and if any person wilfully pull down, deface, destroy any such board or milestone, he shall forfeit a sum not exceeding five pounds for every such offence.

Tolls to be paid as directed by the company.

XCVI. The tolls shall be paid to such persons and at such places upon or near to the railway, and in such manner and under such regulations, as the company shall by notice to be annexed to the list of tolls appoint.

In default

XCVII. If, on demand, any person fail to pay the

due in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or if the carriage shall have been removed from the premises of the company, to detain and sell any other carriages and goods within such premises belonging to the company liable to pay such tolls, and out of the monies arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale rendering the overplus, if any of the monies arising by such sale, and such of the carriages and goods as shall remain unsold, to the person entitled to receive the same, or it shall be lawful for the company to recover such tolls by action at law.

of payment  
of tolls,  
goods, &c.  
may be  
detained  
and sold.

III. Every person being the owner or having the charge of any carriage or goods passing or being conveyed on a railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the use of the railway on which such carriage or goods may have travelled, or be about to travel, an account in writing signed by him of the number and quantity of goods conveyed by any such carriage and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be loaded or taken off the railway; and if the owner or other person conveyed by any such carriage, or brought for sale as aforesaid, be liable to the payment of tolls, then such owner or other person shall be liable to pay the respective numbers or quantities thereof of each or any of such tolls.

Account of  
loading, &c.  
to be given.

IV. If any such owner or other such person refuse to give such account, or to produce his way-bill or receipt of lading, to such collector or other officer or agent of the company demanding the same, or if he give a false account, or if he unload or take off any goods at any other place than the place of loading, he shall be liable to a penalty of five pounds for each offence.

Penalty for  
not giving  
account of  
loading.

than shall be mentioned in such account, with to avoid the payment of any tolls payable in thereof, he shall for every such offence forfeit company a sum not exceeding ten pounds for ton of goods, or for any parcel not exceeding hundred weight, and so in proportion for a quantity of goods than one ton, or for any parcel exceeding one hundred weight, (as the case may be) which shall be upon any such carriage; and a penalty shall be in addition to the toll to which goods may be liable.

Disputes as to amount of tolls chargeable.

C. If any dispute arise concerning the amount of the tolls due to the company, or concerning any charges occasioned by any detention or sale of goods under the provisions herein or in the special Act contained, the same shall be settled by a justice of the peace; and it shall be lawful for the company in the meantime to detain the goods, or (if the case so require) to sell the same, and to take the proceeds of the sale thereof.

Differences as to weights, &c.

CI. If any difference arise between any collector or other officer or servant of the company and any owner of or person having the charge of a carriage passing or being upon the railway, or between the company and any owner of or person having the charge of goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and may weigh, gauge, or otherwise measure the same, and if upon such measuring or examination it shall appear that such carriage or goods are of greater weight or quantity or of a different nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay the costs of such measuring and examining; and if it shall appear that such carriage or goods are of less weight or quantity than and of the same nature as shall

as stated in such account, then the company shall pay such costs, and they shall also pay to such owner or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention.

II. If at any time it be made to appear to any Toll collector, upon the complaint of the company, that such collector is liable for wrongful detention of goods, such detention, measuring, or examining of any carriage or goods, as herein before mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then such collector or other officer shall himself pay the costs of such detention and measuring, and the damages occasioned thereby; and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector, and such justice shall issue his writ accordingly.

13. If any person travel or attempt to travel in a carriage of the company, or of any other company, or party using the railway, without having lawfully paid his fare, and with intent to avoid payment thereof, or if any person having paid his fare for a certain distance, knowingly and willfully remain in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point at which he has paid his fare, to quit such carriage, such person shall for every such offence be liable to the company a sum not exceeding forty shillings.

14. If any person be discovered, either in or Detention committing or attempting to commit any such offence of offenders.

offence as in the preceding enactment mentioning all officers and servants and other persons on the railway of the company, or such other company or person as aforesaid, and all constables, gaolers, and other officers, may lawfully apprehend and detain any person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

Penalty for bringing dangerous goods on the railway.

CV. No person shall be entitled to carry, or require the company to carry, upon the railway any aquafortis, oil of vitriol, gunpowder, matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the goods are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence, and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the parcel to be opened to ascertain the fact.

Delivery of matters in possession or custody of toll collector at removal.

CVI. If any collector of tolls or other officer employed by the company be discharged or suspended from his office, or die, abscond, or absent himself, and if such collector or other officer, or the widow, or any of the family or representatives of any such collector or other officer, refuse or neglect after seven days' notice in writing for that purpose to deliver up to the company, or to any person appointed by them for that purpose, any station, dwelling house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application

made by the company to any justice, it shall be lawful for such justice to order any constable, with assistance, to enter upon such station or other place, and to remove any person found therein, and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company, or any person appointed by them for that purpose.

I. And be it enacted, that the company shall each year cause an annual account in abstract to be prepared, shewing the total receipts and expenditure of all funds levied by virtue of this or the said act for the year ending on the thirty-first of December or some other convenient day in that year, under the several distinct heads of receipts and expenditure, with a statement of the nature of such account, duly audited and certified by the directors or some of them, and by the auditors, and shall if required, transmit a copy of the said account, free of charge, to the overseers of the poor of each several parishes through which the railway shall pass, and also to the clerks of the peace of the parishes through which the railway shall pass, on or before the thirty-first day of January then next; and the said last-mentioned account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every inspection: Provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any clerk of the peace or overseers of the poor, they shall forfeit for every such omission the sum of twenty pounds.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c.

And with respect to the regulating of the use of the railway, be it enacted as follows:

III. It shall be lawful for the company, from time to time, subject to the provisions and restrictions

Bye Laws.

Company to regulate the use of the railway.

in this and the special act contained, to make regulations for the following purposes ; (that is to say)

For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled ;

For regulating the times of the arrival and departure of any such carriages ;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry ;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages ;

For preventing the smoking of tobacco, and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company ;

And, generally, for regulating the travelling upon or using and working the railway :

But no such regulation shall authorise the closing of the railway, or prevent the passage of engines or carriages on the railway, at reasonable times, except any time when in consequence of any of the works being out of repair, or from any other sufficient cause it shall be necessary to close the railway or any part thereof.

Power to make regulations by bye laws.

3 & 4<sup>th</sup> Vict.  
c. 97.

CIX. For better enforcing the observance of any or any of such regulations it shall be lawful for the company, subject to the provisions of an act passed in the fourth year of the reign of her present Majesty, intituled an act for regulating railways, to make bye laws, and from time to time to repeal or alter such bye laws, and make others, provided that such bye laws be not repugnant to the laws of the part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act ; and such bye laws shall be reduced in writing and shall have affixed thereto the common seal of the company ; and any person offending against any



who shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by any bye law in such bye laws as a penalty for any offence; and if the infraction or non-observance of any bye law or other such regulation as is so made be attended with danger or annoyance to or hindrance to the company in the lawful use of the railway, it shall be lawful for the company to interfere to obviate or remove such danger or annoyance or hindrance, and that without incurring any penalty incurred by the infraction of the bye law.

Every copy of the substance of such last-mentioned bye laws, as shall be confirmed or allowed according to the provisions of any act in force regulating the allowance of such bye laws, shall be printed on paper and pasted on boards, and shall be affixed and continued on the front of every conspicuous part of every wharf or station belonging to the company, according to the nature and extent of the matter of such bye laws respectively, and shall give public notice thereof to the parties concerned therein or affected thereby; and such copies shall from time to time be renewed as often as the copies then in use shall be worn out or destroyed; and no penalty imposed by any bye law shall be recoverable unless the same shall have been published and kept published in manner herein provided.

Publication  
of such bye  
laws.

Every such bye law, when so confirmed, published, and affixed, shall be binding upon and be obligatory upon all parties, and shall be sufficient to justify any person acting under the same; and for proof of the validity of any such bye laws it shall be sufficient to produce a printed paper or painted board, on which a copy of such bye laws, was affixed and in manner by this act directed, and in case the same shall afterwards be displaced or damaged, then

Such bye  
laws to be  
binding on  
all parties.

that such paper or board was replaced as soon as conveniently might be.

*Leasing of  
Railway.*

And with respect to leasing the railway, be enacted as follows :

Exercise of  
power to  
lease the  
railway.

CXII. Where the company shall be authorised by the special act to lease the railway or any part thereof to any company or person, the lease so executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the railway, or the part thereof comprised in such lease, in good and sufficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and all other provisions, conditions, covenants, and agreements as are usually inserted in leases of a similar nature. (a)

(a) See 8 & 9 Vict. cap. 96, as to powers of leasing and selling railways. *Addenda.*

Powers  
vested in  
the com-  
pany may  
be exercised  
by the  
lessees.

CXIII. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of railway comprised therein, and during the continuance of such lease all the powers and privileges granted and which might otherwise be exercised and enjoyed by the company, or the directors thereof, their officers, agents, or servants, by virtue of the special act, with regard to the possession, enjoyment, and management of the railway, or the part thereof comprised in such lease, and all tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special act imposed on the company, and their directors, officers, and servants ; and such lessee shall, with respect to the railway comprised in such lease, be subject to all

by this or the special act imposed on the

respect to the engines and carriages to  
on the railway, be it enacted as follows :

*Carriages  
and  
Engines.*

Every locomotive steam engine to be used  
any shall, if it use coal or other similar fuel  
smoke, be constructed on the principle of  
and so as to consume its own smoke ; and  
it be not so constructed the company or  
such engine shall forfeit five pounds for  
bringing which such engine shall be used on

*Engines to  
consume  
their smoke.*

No locomotive or other engine, or other  
of moving power, shall at any time be  
on or used on the railway unless the  
first been approved of by the company ;  
fourteen days after notice given to the  
by any party desirous of bringing any

*Engines to  
be approved  
by the com-  
pany, and  
certificate  
of approval  
given.*

on the railway the company shall cause  
either or other agent to examine such engine  
within three miles distance from the  
place appointed by the owner thereof, and to  
report to the company ; and within seven  
days after each report, if such engine be proper to be  
used upon the railway, the company shall give a cer-  
tificate to the party requiring the same of their  
approval of such engine ; and if at any time the en-  
gine or other agent report that any  
engine upon the railway is out of repair, or  
not fit to be used upon the railway, the company may  
cause the same to be taken off, or may forbid its  
use upon the railway until the same shall have been  
repaired to the satisfaction of the company, and  
the engine being so repaired the company shall  
give a certificate to the party requiring the same  
of their approval of such engine ; and if any dif-  
ference of opinion arise between the company and  
the party requiring the use of any such engine as to the fitness or

*Unfit en-  
gines to be  
removed.*

unfitness thereof for the purpose of being used on the railway, such difference shall be settled by arbitration.

Penalty for using improper engines.

CXVI. If any person, whether the owner or other person having the care thereof, bring or use upon a railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall in any of the cases aforesaid forfeit to the company a sum not exceeding two pounds; and in any such case it shall be lawful for the company to remove such engine from the railway.

Carriages to be constructed according to company's regulations.

CXVII. No carriage shall pass along or be used on the railway (except in directly crossing the same hereunder or by the special act authorized,) unless such carriage be at all times, so long as it shall be used, in the condition which the regulations of the company shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

Regulations to apply also to company's carriages.

CXVIII. The regulations from time to time made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages

ny and to the carriages of other companies  
 using the railway; and a copy of such  
 shall, on demand, be furnished by the  
 of the company to any person applying for

If any carriage, not being of such con- Penalty for  
using im-  
proper car-  
riages.  
 or in such condition as the regulations of  
 for the time being require, be made to  
 upon any part of the railway (except as  
 the owner thereof, or any person having  
 e being the charge of such carriage, shall  
 the company a sum not exceeding ten  
 every such offence, and it shall be lawful  
 company to remove any such carriage from

The respective owners of carriages using Owner's  
name, &c.  
to be regis-  
tered, and  
exhibited  
on car-  
riages.  
 shall cause to be entered with the secre-  
 rier officer of the company appointed for  
 e, the names and places of abode of the  
 such carriages respectively, and the num-  
 ts, and gauges of their respective carriages;  
 owners shall also, if so required by the  
 cause the same particulars to be painted  
 haracters on some conspicuous part of the  
 very such carriage, so as to be always open  
 d every such owner shall, whenever required  
 company, permit his carriage to be weighed,  
 or gauged at the expense of the company.

If the owner of any carriage fail to com- On non-  
compliance  
carriage  
may be  
removed.  
 e requisitions contained in the preceding  
 it shall be lawful for the company to refuse  
 ch carriage to be brought upon the rail-  
 remove the same therefrom until such com-

If the loading of any carriage using the Carriages  
improperly  
loaded, or  
 such as to be liable to collision with other

suffered to obstruct the road, may be unloaded or removed.

carriages properly loaded, or to be otherwise dangerous, or if the person having the care of carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner necessary for preventing such collision or obstruction, and to detain such carriage or goods, or any part thereof, and the expenses occasioned by such unloading, removal, or detention be paid.

Company not to be liable for damage by such unloading, &c.

CXXIII. The company shall not be liable for damage or loss occasioned by any such unloading, removal, or detention as aforesaid, except for such damage wilfully or negligently done to any carriage or goods so unloaded, removed, or detained; nor shall the company be liable for the safe custody of any such carriage or goods so detained unless the same be wrongfully detained by them, and then only for so long as the same shall have been so wrongfully detained.

Owners liable for damage by their servants.

CXXIV. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any trespass or damage done by such engines or carriages, or by any of the servants or persons employed by them, to or upon the railway or the machinery or works belonging thereto, or upon the property of any other person; and if any such servant or other person may lawfully be convicted of such trespass or damage before a justice of the peace, either by the confession of the party offending, or upon the oath of some credible witness; and upon such conviction every such person shall pay to the company, or to the person to whom as the case may be, the damage to be ascertained by such justices, so that the same do not exceed five pounds.

Owners may re-

CXXV. It shall be lawful for any owner

engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person by the same means as the company are enabled to recover the amount of such damage from the owner of any engine or carriage.

cover from  
servants.

And with respect to the settlement of disputes by arbitration, be it enacted as follows :

*Arbitra-  
tion.*

CXXVI. When any dispute authorized or directed by this or the special act, or any act incorporated therewith to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the seal of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of the corporation, and such appointment shall be referred to the arbitrators, and shall be deemed a submission to arbitration on the part of the party from whom the same shall be made; and after any appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such appointed party fail to appoint such arbitrator, then upon such failure the party making the request having himself appointed an arbitrator, may authorize such arbitrator to act on behalf of both parties.

Appoint-  
ment of  
arbitrators  
when ques-  
tions are to  
be deter-  
mined by  
arbitration.

ties ; and such arbitrator may proceed to he determine the matters which shall be in d and in such case the award or determination of single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

CXXVII. If before the matters so referred be determined any arbitrator appointed by party die or become incapable to act, the party to whom such arbitrator was appointed may nominate and appoint in writing some other person to his place, and if for the space of seven days he give notice in writing from the other party for the purpose he fail to do so the remaining or other arbitrator may proceed *ex parte* ; and every arbitrator substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity aforesaid.

Appointment of umpire.

CXXVIII. When more than one arbitrator have been appointed, such arbitrators shall jointly enter upon the matters referred to them and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred under this or the special act ; and if such arbitrator shall die, or become incapable to act, then forthwith after such death or incapacity another umpire in his place ; and the decision of every such umpire on the matters so referred shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators.

CXXIX. If, in either of the cases aforesaid arbitrators shall refuse, or shall for seven days after request of either party to such arbitrators neglect to appoint an umpire, the Board of Trade on the application of either party to such arbitrators may appoint an umpire ; and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under the special act, shall be final.



**CXXX.** If, where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin de novo.

**CXXXI.** If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, for seven days refuse to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

**CXXXII.** If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

**CXXXIII.** The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power for arbitrators to call for books, &c.

**CXXXIV.** Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration; that is to say,

Arbitrator and umpire to make declaration.

I, A. B., do solemnly and sincerely declare, that I

‘ will faithfully and honestly, and to the best  
 ‘ skill and ability, hear and determine the  
 ‘ referred to me, under the provisions of  
 ‘ [*naming the special act*].

‘ Made and subscribed in the presence of

And such declaration shall be annexed to the  
 when made ; and if any arbitrator or umpire  
 made such declaration, shall wilfully act  
 thereto, he shall be guilty of a misdemeanor.

Costs to be  
 in the dis-  
 cretion of  
 the arbi-  
 trators.

CXXXV. Except where by this or the  
 act, or any act incorporated therewith, it  
 otherwise provided, the costs of and attending  
 such arbitration, to be determined by the arbitrators  
 shall be in the discretion of the arbitrators.

Submission  
 to arbitra-  
 tion may  
 be made a  
 rule of  
 Court.

CXXXVI. The submission to any such arbitration  
 may be made a rule of any of the superior Courts  
 the application of either of the parties.

The award  
 not to be  
 set aside for  
 matter of  
 form.

CXXXVII. No award made with respect to  
 question referred to arbitration under the provisions  
 of this or the special act shall be set aside on account of  
 irregularity or error in matter of form.

Service of  
 notices  
 upon com-  
 pany.

CXXXVIII. And be it enacted, that a summons or notice, or any writ, or other process in  
 law or in equity, requiring to be served on the  
 company, may be served by the same being  
 transmitted through the post directed to the principal  
 office of the company, or one of their principal  
 offices where there shall be more than one, or  
 given personally to the secretary, or in case there  
 no secretary then by being given to any one of the  
 company.

Tender of  
 amends.

CXXXIX. And be it enacted, that if a party  
 shall have committed any irregularity, or any  
 other wrongful proceeding in the execution of the

cial act, or any act incorporated therewith, or  
 ie of any power or authority thereby given,  
 before action brought in respect thereof such  
 take tender of sufficient amends to the party  
 such last-mentioned party shall not recover  
 such action; and if no such tender shall  
 n made it shall be lawful for the defendant,  
 of the Court where such action shall be  
 at any time before issue joined to pay into  
 ch sum of money as he shall think fit, and  
 1 such proceedings shall be had as in other  
 re defendants are allowed to pay money into

ith respect to the recovery of damages not *Recovery of*  
 provided for, and of penalties, and to the *Damages*  
 tion of any other matter referred to justices, *and*  
 ted as follows: *Penalties.*

In all cases where any damages, costs, or *Provision*  
 are by this or the special act, or any act *for damages*  
 ted therewith, directed to be paid, and the *not other-*  
 f ascertaining the amount or enforcing the *wise pro-*  
 thereof is not provided for, such amount, in *vided for.*  
 dispute, shall be ascertained and determined  
 istices; and if the amount so ascertained be  
 by the company or other party liable to pay  
 within seven days after demand, the amount  
 recovered by distress of the goods of the  
 , or other party liable as aforesaid; and the  
 y whom the same shall have been ordered to  
 or either of them, or any other justice, on  
 n, shall issue their or his warrant accord-

. If sufficient goods of the company cannot *Distress*  
 l whereon to levy any such damages, costs, *against the*  
 nses payable by the company, the same may, *treasurer.*  
 amount thereof do not exceed twenty pounds,  
 ered by distress of the goods of the treasurer  
 ompany; and the justices aforesaid, or either

of them, on application, shall issue their warrant accordingly; but no such distress against the goods of such treasurer unless previous notice in writing, stating the amount and demanding payment thereof, have been served on such treasurer, or left at his residence; and no treasurer pay any money under such distress, but he may retain the amount so paid to defray all costs and expenses occasioned thereby, and the money belonging to the company, coming into his custody or control, or he may sue the company for the same.

Method of proceeding before justices in questions of damages, &c.

CXLII. Where in this or the special act a question of compensation, expenses, or damages, or other matter, is referred to the consideration of any one justice or more, it shall be lawful for any justice, upon the application of any party, to summon the other party to appear before one justice, or before two justices, as they may think fit, at a time and place to be named in the summons; and upon the appearance of such party, or in the absence of any of them, upon proof of service of the summons, it shall be lawful for one justice, or such two justices, as they may think fit, to hear and determine such question, and to examine such parties or agents, and their witnesses, on oath; and the course of such inquiry shall be in the discretion of the justices, and they shall determine the amount of damages, if any, to be paid.

Publication of penalties.

CXLIII. The company shall publish particulars of the several offences for which a penalty is imposed by this or the special act, and of the amount of every such penalty, and cause such particulars to be printed on paper, and pasted thereon, and cause such board to be hung up or affixed in some conspicuous place, and shall cause a copy of the same to be sent to the clerk of the peace for the county or borough in which the railway is situated, and to the clerk of the peace for the county or borough in which the railway is situated, and to the clerk of the peace for the county or borough in which the railway is situated.

conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be fixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable, or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special act for the purpose of publishing any bye law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for such publication.

CXLV. Every penalty or forfeiture imposed by this or the special act, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices, and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party com-

Penalties to be summarily recovered before two justices.

plained against, or upon the oath of one credible person or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit. (a)

(a) Penalties imposed by an act of Parliament, the recovery of which is not provided for, may be sued for in the superior Courts : nor does a clause which directs, that "penalties otherwise provided for, *may be recovered on complaint to justices,*" affect the right so to sue for them. So held by Justice Cresswell, at nisi prius. *Collinson v. The Newcastle and Darlington Railway Company*, 6 C. & Kir. 546.

Penalties  
to be levied  
by distress.

CXLVI. If forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture and of such costs as aforesaid be not paid, the amount of such penalty and costs shall be levied by distress and such justices or either of them shall issue therefor or his warrant of distress accordingly.

Imprison-  
ment in  
default of  
distress.

CXLVII. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can conveniently be made to the warrant of distress to be issued for levying such penalty or forfeiture and costs unless the offender give sufficient security by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be levied within the jurisdiction of such justice whereon to levy such penalty or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress ; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the

When such justice shall by warrant cause such to be committed to gaol, there to remain bail for any term not exceeding three months, such penalty or forfeiture and costs be sooner satisfied.

III. Where in this or the special act, or incorporated therewith, any sum of money, in the nature of penalty or otherwise, is to be levied by distress, such sum of money levied by distress and sale of the goods and of the party liable to pay the same; and the arising from the sale of such goods and after satisfying such sum of money, and the of the distress and sale, shall be returned, and, to the party whose goods shall have been

Distress  
how to be  
levied.

IV. No distress levied by virtue of this or of any act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making distress be deemed a trespasser, on account of any want of form in the summons, conviction, or distress, or other proceeding relating thereto; nor shall such party be deemed a trespasser on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for the damage in an action upon the case.

Distress not  
unlawful  
for want of  
form.

And the justices by whom any such penalty or fine shall be imposed may, where the application of it is not otherwise provided for, award not more than one-half thereof to the informer, and shall apply the remainder to the overseers of the poor of the parish in which the offence shall have been committed, or to be applied in aid of the poor's rate of such parish, if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in

Applica-  
tion of  
penalties.

aid of the poor's rate of such extra-parochial or if there shall not be any poor's rate therein, of the poor's rate of any adjoining parish or district

Penalties  
to be sued  
for within  
six months.

CLI. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therein for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months after the commission of such offence.

Damage to  
be made  
good in  
addition to  
penalty.

CLII. If, through any act, neglect, or default, in respect of which account whereof any person shall have incurred a penalty imposed by this or the special act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty, and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, by such justices, or one of them, shall issue their order or warrant accordingly.

Penalty on  
witnesses  
making  
default.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, or having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.



It shall be lawful for any officer or agent <sup>Transient offenders.</sup> company, and all persons called by him to his aid, to seize and detain any person who shall committed any offence against the provisions of the special act, and whose name and residence unknown to such officer or agent, and convey all convenient despatch, before some justice, by warrant or other authority than this or the special act; and such justice shall proceed without delay or despatch to the hearing and determination of the complaint against such offender.

The justices before whom any person shall be convicted of any offence against this or the special act incorporated therewith, may cause the indictment to be drawn up according to the form in schedule B to this act annexed. <sup>Form of conviction.</sup>

No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the proceedings be removed by certiorari or otherwise into any superior Courts (a). <sup>Proceedings not to be quashed for want of form, &c.</sup>

In what circumstances the Court of Queen's Bench may set aside a conviction notwithstanding this clause, see note to the special Act, s. 145.

If any party shall feel aggrieved by any conviction or adjudication of any justice with respect to any penalty or forfeiture under the provisions of the special act, or any act incorporated therewith, such party may appeal to the general sessions for the county or place in which the offence shall have arisen; but no such appeal shall be entertained unless it be made within four calendar months after the making of such determination, nor unless ten days' notice in writing be served on the party against whom the appeal is made, stating the nature and grounds thereof, nor unless the appellant forthwith <sup>Parties allowed to appeal to quarter sessions on giving security.</sup>

aid of the poor's rate of such extra-parochial or if there shall not be any poor's rate therein, of the poor's rate of any adjoining parish or district.

Penalties  
to be sued  
for within  
six months.

CLI. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therein, for any offence made cognizable before a justice of the peace, unless the complaint respecting such offence shall have been made before such justice within six months after the commission of such offence.

Damage to  
be made  
good in  
addition to  
penalty.

CLII. If, through any act, neglect, or default, in respect of which account whereof any person shall have incurred a penalty imposed by this or the special act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty, and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their order or warrant accordingly.

Penalty on  
witnesses  
making  
default.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, or having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

LIV. It shall be lawful for any officer or agent <sup>Transient offenders.</sup> to be company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of the special act, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determination of the complaint against such offender.

V. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the indictment to be drawn up according to the form in the schedule to this act annexed. <sup>Form of conviction.</sup>

VI. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any superior Courts (a). <sup>Proceedings not to be quashed for want of form, &c.</sup>

Under what circumstances the Court of Queen's Bench interfere notwithstanding this clause, see note to the Statute of Frauds Act, s. 145.

VII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general sessions for the county or place in which the offence of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four calendar months next after the making of such determination or adjudication, nor unless ten days' notice in writing of the appeal, stating the nature and grounds thereof, be given to the party against whom the appeal is brought, nor unless the appellant forthwith <sup>Parties allowed to appeal to quarter sessions on giving security.</sup>

after such notice enter into recognizances, sufficient sureties, before a justice, condition to prosecute such appeal, and to abide the the Court thereon.

Court to make such order as they think reasonable.

CLVIII. At the quarter sessions for which notice shall be given the Court shall proceed and determine the appeal in a summary way, may, if they think fit, adjourn it to the sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any forfeiture, or they may confirm or quash the adjudication, and order any money paid by the party or levied by distress upon his goods, to be repaid to him, and may also order such further satisfaction to be made to the party injured as they may think reasonable; and they may make such order as to the costs, both of the adjudication and appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

CLIX. Provided always, and be it enacted, notwithstanding anything herein or in any other act, or any act incorporated therewith, that every penalty or forfeiture imposed by the special act, or any act incorporated therewith, or any bye law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application of the same is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties and forfeitures, other than fines upon drunken persons and upon constables for misconduct, or for assault upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied. This Act passed in the third year of the reign of her Majesty, intituled *An Act for regulating the Courts in the Metropolis*; and every order or direction of any of the police magistrates in respect

which forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last mentioned act; and every magistrate by whom any order or conviction shall have been made, shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the allowance of expenses as he or they would have been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned act.

CLX. And be it enacted, that every person, who on any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

CLXI. And be it declared and enacted, that all sums of money which have been or shall be paid into the bank of Ireland in the name and with the authority of the accountant-general of the Court of Chancery of Ireland, under the provisions of an Act passed in the second year of the reign of her present Majesty, intituled *An Act to provide for the custody of certain monies paid in pursuance of the winding orders of either House of Parliament by scribers to works or undertakings to be effected under the authority of Parliament*, shall and may be paid out and applied under any order of the said Court of Chancery exempt from usher's poundage.

Money paid into the Bank of Ireland to be exempt from usher's poundage.

1 & 2 Vict. c. 117.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows :

Access to Special Act.

CLXII. The company shall at all times after the expiration of six months after the passing of the special act keep in their principal office of business,

Copies of special act to be kept and depo-

sited, and  
allowed to  
be in-  
spected.

a copy of the special act, printed by the printer of her Majesty, or some of them ; shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of the special act so printed as aforesaid ; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copy of the special act, and shall permit all persons to be lawfully entitled to inspect the same, and make extracts and copies therefrom, in the like manner, and under the like terms, and under the like penalty for breach thereof as is provided in the case of certain plans and maps by an act passed in the first year of the reign of her present Majesty, intituled *An Act to enable the clerks of the peace for counties, and other persons to take the custody of such documents as shall be deposited with them under the standing orders of either House of Parliament.*

7 W. 4, &  
1 Vict.  
c. 83.

Penalty on  
company  
failing to  
keep or  
deposit  
such copies.

CLXIII. If the company shall fail to keep or deposit, as herein-before mentioned, any of the copies of the special act, they shall forfeit five pounds for every such offence, and also five pounds for every day afterwards during which such copies shall be not so kept or deposited.

Act not to  
extend to  
Scotland.

CLXIV. And be it enacted, that this act shall not extend to Scotland.

Act may be  
amended  
this session.

CLXV. And be it enacted, that this act shall be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULE referred to by the foregoing Act.

to wit

It is remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_ year of our Lord \_\_\_\_\_ A.B. is con-  
 sidered before us, C., D., two of her Majesty's justices  
 of the peace for the county of \_\_\_\_\_ [here  
 to write the offence generally, and the time and  
 when and where committed], contrary to the  
 same the special act]. Given under our  
 hands and seals the day and year first above written.

C.

D.

# 8 VICT. CAP. 16.

*Act for consolidating in One Act certain Provi-  
 sions usually inserted in Acts with respect to the  
 Constitution of Companies incorporated for carry-  
 ing on Undertakings of a public Nature.*

[8th May, 1845.]

WHEREAS it is expedient to comprise in one general  
 sundry provisions relating to the constitution  
 management of joint stock companies, usually  
 introduced into Acts of Parliament authorizing the  
 execution of undertakings of a public nature by  
 companies, and that as well for the purpose of  
 obviating the necessity of repeating such provisions  
 in each of the several acts relating to such under-  
 takings, as for ensuring greater uniformity in the  
 provisions themselves: May it therefore please your  
 Majesty that it may be enacted; and be it enacted  
 by the Queen's most excellent Majesty, by and with

Act to apply to all companies incorporated by acts hereafter to be passed.

the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, this act shall apply to every joint stock company which shall by any act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall expressly varied or excepted by any such act, shall apply to the company which shall be incorporated by such act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively, and such clauses and provisions, as well as the clauses and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid, form part of such act, and be construed together therewith as forming one act.

Interpretations in this act:

II. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows:

"the special act:"

The expression "the special act" used in this act shall be construed to mean any act which shall hereafter be passed incorporating a Joint Stock Company for the purpose of carrying on any undertaking and with which this act shall be so incorporated

"prescribed:"

aforesaid; and the word "prescribed" used in this act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works,

"the undertaking."

whatever nature, which shall by the special act be authorized to be executed.



- III. The following words and expression both in this and the special act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)
- Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number: Interpretations in this and the special act:
  - Words importing the masculine gender only shall include females: Number:
  - The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure: Gender:
  - The word "lease" shall include an agreement for a lease: "Lands:"
  - The word "month" shall mean calendar month: "Lease:"
  - The expression "superior Courts" shall mean her Majesty's superior Courts of record at Westminster or Dublin, as the case may require: "Month:"
  - The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath: "Superior Courts:"
  - The word "county" shall include any riding or other like division of a county, and shall also include county of a city, or county of a town: "Oath:"
  - The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such Justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorized or required to be done by two Justices the expression "two Justices" shall be understood to mean two Justices assembled and acting together in petty sessions: "County:"
  - "Justice:"
  - "Two justices:"

“the company:”

The expression “the company” shall mean the company constituted by the special act:

“Directors:”

The expression “the directors” shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name:

“Shareholder:”

The word “shareholder” shall mean shareholder, proprietor, or member of the company; and referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: And

“Secretary:”

The expression “the secretary” shall mean the secretary of the company, and shall include the word “clerk.”

Short title of the act.

IV. And be it enacted, that in citing this in other acts of Parliament and in legal instruments it shall be sufficient to use the expression “the Companies Clauses Consolidation Act, 1845.”

Form in which portions of this act may be incorporated with other acts.

V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that for the purpose of making any such incorporation shall be sufficient in any such act to enact that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act and the words introductory to the enactment with respect to such matter), shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act and such act shall be construed as if the substance of such clauses and provisions were set forth there

reference to the matter to which such act shall

and with respect to the distribution of the capital of the company into shares, be it enacted as fol-

*Distribu-  
tion of  
Capital.*

The capital of the company shall be divided into shares of the prescribed number and amount; each share shall be numbered in arithmetical succession, beginning with number one; and every share shall be distinguished by its appropriate

Capital to  
be divided  
into shares.

All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate (a).

Shares to  
be personal  
estate.

This clause, now inserted in most acts, obviates some doubts which have been raised as to whether the transfer of shares, under some circumstances, come under the provision of the Statute of Frauds, as being a disposal of interest in real estate. See *Humble v. Mitchell*, 11 A. & E. 205; *Re Dilworth*, 12 Ch. 411.

Every person who shall have subscribed or paid any sum or upwards to the capital of the company, or shall otherwise have become entitled to a share (a) in the company, and whose name shall have been entered on the register of shareholders hereafter mentioned, shall be deemed a shareholder of the company.

Share-  
holders.

It shall otherwise have become entitled to a share, &c.] It has been long a question, and still remains to some extent undecided, what constitutes a good title to a share in a Joint Stock Company. Some of the earlier decisions on the Bubble Act, since its repeal, seemed to point to the conclusion that a share in an incorporated company, professing to issue shares transferred by the will of the holder, was an illegal one; (see judgment of Lord Tenterden in *Josephs v. Pebrer*, 3 B. & C. 639. *Perrier v. Fellows*, 5 Bing. 248. *Blundell v. Winsor*, 10 Jurist, 601.; and see *Harvey v. Collett*, 10 Jurist, 603; *v. Cocker*, 4 Beav. 59;) the effect of later deci-

sions has been that such a course of proceeding, symptom of illegality, is not conclusive against the company, unless coupled with proof that its object and its proceedings are likely to be injurious to the public; (see *Heathorn*, 6 M. & G. 181; *Ellison v. Bignold*, 2 Jac. 101; *Nockels v. Crosby*, 3 B. & C. 814. In accordance with this view, the transferability of shares, at the will of the holder, was recognized in the Court of Queen's Bench to this effect: that there was nothing illegal in a company, after incorporating, entering the name of a holder of a scrip certificate, not the person to whom it was first issued, on the register of holders, and that the registry book being made prima facie evidence (as in this act) of proprietorship, such evidence was not rebutted by proof that the person therein named was not the original subscriber for the share. *The London and North Western Railway Company v. Freeman*, 2 M. & G. 101.

It has since been decided in the Exchequer that the issue of scrip-certificates is not necessarily illegal; it seems, however, whether the holder of a scrip-certificate can compel the company to register him as a shareholder, unless he deduce his title to it from the first holder or from his various assignees. *Daly v. Thompson*, 10 M. & W. 101; *Garrard v. Hardy*, 6 Scott, N. R. 476.

A very recent decision of the Exchequer removes the doubt which was entertained, as to whether the 26th section of the Joint Stock Company's Act, imposing a penalty on the non-registration of the shares of a Joint Stock Company, before complete registration or incorporation, applied to unincorporated Companies, establishing that it does not. *Young v. Esdaile*, 15 L. J., N. S.; Exch. 81. See Appendix.

Registry  
of share-  
holders.

IX. The company shall keep a book, to be called the "Register of Shareholders;" and in such book shall be fairly and distinctly entered, from the beginning of time, the names of the several corporations, and the names and additions of the several persons who are entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscription on such shares, and the surnames or names of the said shareholders shall be entered in alphabetical order; and such book shall be authenticated by the common seal of the company, and affixed thereto; and such authentication shall take place at the first ordinary meeting, or at

meeting of the company, and so from me at each ordinary meeting of the ).

been entered in the registry book is not necessary precedent to becoming a shareholder, or to es by deed after the passing of the act. *Sheffield, Lyne and Manchester Railway Company, v. Railway Cases, 522, post.*

dition to the said register of shareholders shall provide a book, to be called the "Shareholders' Address Book," in which the secretary from time to time enter in alphabetical order the corporate names and places of business of the shareholders of the company, being corporate names and surnames of the several other shareholders their respective christian names, places and descriptions, so far as the same shall relate to the company; and every shareholder, whether a shareholder be a corporation, the clerk or secretary of such corporation, may at all convenient times supply such book gratis, and may require a copy or of any part thereof; and for every copy so required to be copied, the company shall pay a sum not exceeding sixpence.

Add entries of shareholders.

On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking in which shareholder is entitled; and the same shall be in conformity with the form in the schedule (A.) annexed, or to the like effect; and for the recovery of the same the company may demand any sum not exceeding the prescribed amount, or if no sum is prescribed, then a sum not exceeding two shillings and sixpence.

Certificates of shares to be issued to the shareholders.

The said certificate shall be admitted in all Certificat

to be evidence.

courts as *prima facie* evidence of the title of the shareholder, his executors, administrators or assigns, to the share therein specified; and notwithstanding the want of such certificate shall not be a bar to the holder of any share from disposing thereof.

Certificate to be renewed when destroyed.

XIII. If any such certificate be worn, damaged, then, upon the same being presented to some meeting of the directors, such directors may order the same to be cancelled, and another similar certificate shall be given in which the property of such certificate shall be in the share therein mentioned, shall be at the time of the loss or if such certificate be lost or destroyed without proof thereof to the satisfaction of the directors, a similar certificate shall be given to the person entitled to the certificate so lost or destroyed; and in either case a due entry of the substitution shall be made by the secretary in the books of the shareholders; and for every such certificate so issued or exchanged the company may demand a sum not exceeding the prescribed amount, then a sum not exceeding two shillings and sixpence.

*Transfer of Shares.*

And with respect to the transfer or assignment of shares, be it enacted as follows :

Transfer of shares to be by deed duly stamped.

XIV. Subject to the regulations hereinafter contained, every shareholder may transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall be subject to the provision hereinafter contained, be considered as capital stock; and every such transfer shall be by deed duly stamped (a), in which the particulars shall be truly stated; and such deed may be in the Form in the Schedule (B.) to be annexed, or to the like effect.

(a) *By deed duly stamped, &c.*] A deed of transfer

the seller, with the name of B. inserted as the before any execution of the deed by B. it was void, instead of B. should be the purchaser; whereof B. being struck out and that of C. substituted, the altered deed. It was held, that the deed was void between A. and B. that it could not operate in favour of C. without a new stamp. *The London and Lancashire Railway Company v. Fairclough*, 2 M. & Gr. 674. Effect of the wording of a deed of this kind on the duty, see *Wolseley v. Cox*, 2 Q. B. 321. See also *Re v. M' Morine*, 6 M. & W. 200.

Transfer of shares from an original subscriber after the act is good, although made before the sealing of the deed by the proprietors (see section 9,) and although the shares have never been registered a proprietor. *Sheffield and Manchester Railway Company v. Railway Cases*, 522.

Deed of transfer executed by the owner of the shares in blank for the name of the purchaser, and delivered to him on the sale of them the name of the purchaser having been inserted, was held void. *Hebblewhite v. Railway Cases*, 51.

As to contracts for the sale and purchase of railway shares, many cases have been decided, to most of which it is not necessary to refer to by name, as they relate rather to the law of contracts than to railway law. It may be sufficiently generally said that a contract for the sale of shares is enforceable; (*Humble v. Mitchell*, 11 A. & E. 205. *Edwards v. Duncuft*, 3 M. & W. 422. *Duncuft v. Albrecht*, 3 M. & W. 422.) and shares in a Joint Stock Company are not within the Stock Jobbing Act; (7 G. 2, c. 8;) (*Edwards v. Duncuft*, 4 M. & Gr. 355; L. J. 1842, C. P. 292.) The duty of the vendor to make out a good title before the purchaser to complete his part of the contract, and the purchaser then failing to do so may maintain an action against him, alleging as special damage (for example), that he has been compelled to pay. On the vendor intimating his readiness to execute a conveyance, and the purchaser to tender the statutory form of conveyance, and the vendor refuse to execute this, the purchaser is entitled to maintain an action against him. *Humble v. Railway Cases*, 533. As to indemnity by the vendor on the part of the vendee, see *Jackson v. Cocker*, 1 M. & W. 100. See, however, analogous cases in equity of sales of estates subject to mortgage; and see remarks on the subject. In *Phene v. Gillon*, 15 L. J., N. S. Canc. 65, it was held that in 1841 the plaintiff had advanced money to the defendant in undertaking to transfer shares, and to indemnify him against calls and payments in respect thereof. In 1842

they were regularly transferred. In 1843 the plaintiff and plaintiff at defendant's request applied to the company to re-transfer the shares into the name of defendant. In the negotiation the Company became insolvent, and the plaintiff proceeded to enforce a judgment against the plaintiff as registered shareholder. Held that defendant was the owner of the shares, and plaintiff trustee, and as plaintiff was bound from his *cestui que* trust to indemnify against claims of the trust property.

The non-payment of calls due would be (interpleader) defence to an action for not accepting shares. *M' Morine*, 2 Railway Cases, 51. A reasonable time was allowed the vendor within which to complete the contract by delivery, and in one case seven days was not a reasonable time, being allowed by the custom of the Stock Exchange; it was also held, that it was the duty of the vendee, in order to support an action for non-acceptance, to shew that he was ready and willing to pay the calls during the whole of that time. *Stewart v. Caird*, 11 Cases, 616. See *Hare v. Waring*, 3 M. & W. 101; *v. De Medina*, 21 L. J., ; Q. B. 120; 4 Q. B. 411; 11 Cases, 454. *Barnard v. Hamilton*, 2 Railway Cases, 454. A reasonable time is allowed the vendee for the completion of the contract, after the expiration of which the plaintiff is to sue the vendor to sell the shares, and sue him for their deterioration in value, should there be any, when the vendee finally repudiated the bargain. *Cauty, supra*.

Transfers  
of shares to  
be regis-  
tered, &c.

XV. The said deed of transfer (when executed) shall be delivered to the secretary to be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "Book of Transfers," and shall endorse such deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry, together with such endorsement on the certificate, the company may demand any sum not exceeding the prescribed amount, or if no sum is prescribed, then a sum not exceeding one penny and sixpence; and on the request of the holder of any share an endorsement of such share may be made on the certificate of such share, and a new certificate being granted; and such certificate, being signed by the secretary, shall be considered in every respect the same as a new



until such transfer has been so delivered to the company as aforesaid the vendor of the share shall be liable to the company for any calls that may be made upon such share, and the purchaser of such share shall not be entitled to receive any of the profits of the undertaking, or to vote in respect of such share (a).

Where a Railway Act made shares transferable by deed, and provided that on every sale, the deed, being executed by the purchaser, should be kept by the company, or by any officer or clerk of the company, who should enter in the books to be kept for that purpose a memorial of such sale, and indorse the entry of such memorial on the deed of sale or transfer; and that until such memorial should be made and entered, the seller should remain liable for any calls, and the purchaser should have no part or share in the profits; it was held, that in order to shew a party sued to be a proprietor under such deed of transfer, it was necessary to prove that a memorial of the transfer had been made. *London and Brighton Railway Company v. Fairhead*, 1843, 12 Cl. & F. 674.

This section must be treated as one intended only for the security of the company. According to the judgment of Justice Tindal in this case, if any call were made on the transfer of a share by deed, and before the delivery of the deed to the secretary for the purpose of being entered in the register of transfers, it would be in the power of the transferor to come upon either the transferor or transferee by the terms of the deed, on the transferor if his being the registered shareholder, who it would be difficult to recover the calls from the transferee, whose duty it was to deliver the deed of transfer to the secretary.

The directors of a dock company executed the usual sub-agreement and Parliamentary contract, binding themselves *inter alia* to pay the sums subscribed by each of them, and to do all such other things as the directors should think necessary or expedient for the carrying out of their act. After their bill had passed the Commons, the House of Commons resolved that the directors should comply with a then standing order of the House which required four-fifths of the probable expense to be subscribed for, nine of the directors subscribed for one thousand additional shares each, making up the necessary sum.

The Act prescribed a form of conveyance of shares and (similar to sections 14 & 15.) None of these nine shares were registered; at the time of entering into

additional subscriptions, the directors subscribed and signed a memorandum, declaring that the additional shares were held by them, in trust for the company: at a meeting of the directors a resolution was passed "that the additional shares should be held in trust for the company:" at a special general meeting of the company, a resolution was passed, that the trust entered into for the company should be annulled, and that the additional shares should be transferred to the secretary; and at a meeting of directors such resolution was subsequently confirmed.

It was held, that the transfer of the additional shares to the secretary of the company, without the specified form of conveyance and memorial was void. *Preston v. The Grand Central Dock Company*, 2 Railway Cases, 335.

Transfer  
not to be  
made until  
calls paid.

XVI. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him (a).

(a) This clause sets at rest a question which has been raised on the construction of acts—whether, if a share be transferred after the making of a call, and before its becoming payable, the transferor or transferee is liable to calls. In one case, the Court of Queen's Bench decided that the transferee was liable, and the Common Pleas that the transferor was liable. *Aylesbury Railway Company v. Thompson*, 2 Railway Cases, 668. *The Same v. Mount*, 2 Railway Cases, 679; same case in error, 3 Railway Cases, 469; where the judgment below was reversed, but merely on a point of pleading.

There is one question left, however, viz., when a call may be considered "to be made," whether at the date of the original resolution, or at the time of fixing the mode of payment, or giving notice in the newspapers, or of the call becoming payable. It may be that the resolution of the directors is only an incomplete act, and that the call is not complete until the mode of payment is appointed, and notice given, so that no one is liable unless he be a proprietor when the whole of these circumstances occur; and until all these have occurred, a proprietor is not deprived of the right of a free transfer.

Closing of  
transfer  
books.

XVII. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing

the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

XVIII. If the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a master or master extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated, no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof (a).

Transmission of shares by other means than transfer to be authenticated by a declaration.

(a) *No person claiming by virtue of such transmission, shall be entitled to receive any share or profit in the undertaking.* It has been held, that the personal estate of a testator is liable for calls made after his death, with interest at five per cent. *Per v. Fyler*, 2 Railway Cases, 813.

This section, though affecting the rights of leg seems to have left their liabilities where they probably be construed like section 15, as one for the security of the company.

Proof of  
transmis-  
sion by  
marriage,  
will, &c.

XIX. If such transmission be by marriage of a female shareholder, the tion shall contain a copy of the reg marriage, or other particulars of the thereof, and shall declare the identity with the holder of such share; and i mission have taken place by virtue c mentary instrument, or by intestacy, tl the will or the letters of administr official extract therefrom, shall, togeth declaration, be produced to the secretary such production in either of the cases secretary shall make an entry of the the said register of transfers.

Company  
not bound  
to regard  
trusts.

XX. The company shall not be bou the execution of any trust, whether plied, or constructive, to which any shares may be subject; and the receip in whose name any such share shall books of the company, or if it stands of more parties than one, the receipt c parties named in the register of sharel from time to time be a sufficient disci company for any dividend or other su payable in respect of such share, no any trusts to which such share may t ject, and whether or not the compa notice of such trusts; and the comp be bound to see to the application o paid upon such receipt.

Payment of  
Calls.

And with respect to the payment of and the means of enforcing the paymen it enacted as follows :

Subscrip-

XXI. The several persons who hav

ney towards the undertaking, or their legal representatives, respectively, shall pay the sums <sup>tions to be paid when called for.</sup> ively so subscribed, or such portions thereof from time to time be called for by the company; and with respect to the provisions or in the special act contained for enforcing ment of calls, the word "shareholder" shall to and include the legal personal representatives of such shareholder.

It shall be lawful for the company from <sup>Power to make calls.</sup> time to make such calls of money upon the e shareholders, in respect of the amount of respectively subscribed or owing by them, as ll think fit, provided that twenty-one days' the least be given of each call, and that exceed the prescribed amount, if any, and cessive calls be not made at less than the d interval, if any, and that the aggregate of calls made in any one year do not exceed rcribed amount, if any; and every share- shall be liable to pay the amount of the calls , in respect of the shares held by him, to ns and at the times and places from time to ointed by the company (a).

Sheffield and Manchester Railway Act (7 Wm. 4. c. 115, empowered the directors, from time to time, such calls from the proprietors on their respective hey, from time to time, should find necessary, so that ould exceed 10% on each share, and that there should rval of three calendar months between each successive wenty-one days' notice should be given of every such vertisement in the local newspapers; and the pro- ere thereby required to pay the calls on their shares rson, at such time, at such place, and in such manner, ctors should, from time to time, direct and appoint. ctors made a resolution for a call, specifying therein nt of the call, and the day of payment, but not the he person to whom the payment was to be made: but of that call, subsequently inserted in the local news- ccording to the directions of the act, specified all those

matters. In an action for the amount of such call, the party who was a proprietor at the date of the resolution, notice, and of the day appointed for payment, it was held, also, that there was any change in the directors during the interval; it was held, that the call was properly made.

By another resolution, made on the 13th of March, the directors resolved that a call of 5*l.* should be made on the 1st of March, to be paid on the 1st of May: it was held that this was not invalid because the resolution was prospective. *Field, Ashton-under-Lyne, and Manchester Railway v. Woodcock*, 2 Railway Cases, 522. Under such circumstances a mandamus might be granted, to compel the directors to make calls, see *Reg. v. Victoria Park Company*, —Judgment of Lord Denman.

Interest to be paid on calls unpaid.

XXIII. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for payment thereof to the time of the actual payment.

Power to allow interest on payment of subscriptions before call.

XXIV. It shall be lawful for the company, if they think fit, to receive from any of the shareholders who are willing to advance the same all or any part of the monies due upon their respective shares in excess of the sums actually called for; and upon the monies so paid in advance, or so much of them as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company shall pay interest at such rate, not exceeding the legal rate, as the interest for the time being, as the shareholder may require, such sum in advance and the company shall be bound upon.

Enforcement of calls by action.

XXV. If at the time appointed by the directors for the payment of any call any shareholder do not pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the

lawful interest, from the day on which such call was payable (a).

(a) It is not necessary to insert a count for interest in the declaration. *The Southampton Dock Company v. Richards. The Same v. Arnett*, 2 Railway Cases, 215.

XXVI. In any action or suit to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special act.

Declara-  
tion in  
action for  
calls.

XXVII. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share (a) or more in the undertaking, and that such call was in fact made, and that such notice thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

Matter to  
be proved  
in action for  
calls.

(a) *That the defendant was the holder of one share, &c.]*  
To prove this it is not necessary to show that the defendant has been registered, or become a proprietor by deed of transfer, or

if a deed of transfer be relied on, that it has been registered. See notes to sections 9 and 15. If a deed of transfer have been executed, but not delivered to the secretary to be entered, the company may either prove that the defendant is the holder of the share by the deed, or that the defendant is registered as a shareholder—in other words, they have the choice of action against two parties. The following cases have been decided on the validity of declarations under different statutes : *Dundalk Railway Company v. Tapster*, 1 Q. B. 667 ; 2 Railway Cases, 561. *The Aylesbury Railway Company v. Mount*, 4 M. & Gr. 651 ; 2 Railway Cases, 679. 3 Id. 469. *The Great North of England Railway Company v. Biddulph*, 7 M. & W. 243. *Southampton Dock Company v. Richards*, 1 M. & Gr. 448 ; 2 Railway Cases, 215. *Thames Haven Railway Company v. ...* 5 M. & Gr. 274 ; 3 Railway Cases, 441,—and see forms in Addenda, where other cases are referred to, as containing precedents in pleading connected with this subject.

If the defendant suffer judgment by default, a rule to compute cannot be had, but there must be a writ of inquiry. *Chatham and Great Western Union Railway Company v. ...* 7 Dowl. P. C. 616.

In an action for two calls, brought by the Birmingham and Aylesbury Railway Company, it appeared the act provided that upon the trial it should be only necessary to prove that the defendant, at the time of the making of the respective calls, was the proprietor of a share in the undertaking. The act required that there should be twenty-one days' notice of the making of the calls. Notice of the first call was given on the 6th of March, to be payable on the 9th of April : of the second call, on the 23rd of June, to be payable on the 28th of July. The defendant became a proprietor by the transfer of shares on the 7th of April ; and it was held, that he was not liable for the call made previously, but not required to be paid till after the 7th of April ; so that there was a verdict against him for the amount of the second, but not of the first call. *The Birmingham and Aylesbury Railway Company v. Thompson*, L. J. 1841 ; Q. B. 124 ; 2 Nichol, Hare & Carrow, 668.

In the case, however, of *The Aylesbury Railway Company v. Mount*, 4 M. & Gr. 651 ; L. J. 1842 ; C. P. 258, where the act provided, that it should only be necessary to prove that the defendant at the time of making the calls was a proprietor, and that the call was made and notice given : it was held, (in C. P.) that where a proprietor had transferred his shares after a call had been made, but before it was payable, such transfer having been duly entered and endorsed, the company had no right of action against such proprietor.

This judgment was reversed in the Exchequer Chamber on error, on other grounds, the Court declining to decide the point.



re the special act makes an express condition precedent to the powers of the act being put in force, it seems that the failure of such condition must be proved, at least if speedily reversed.

Accordingly, where the statute provided, that "the whole of the sum of 100,000*l.* shall be subscribed before any of the powers and provisions given by this act shall be put in force," the subsequent section, that in any action for calls it should be necessary for the company to prove that the defendant, in making such call, was an owner of shares in the company, that such call was in fact made, and that such proof was given as is directed by the act; and that the defendant should thereupon be entitled to recover that which appeared to be due. The company made a call on the day before the subscriptions were complete, and commenced proceedings for the call after they were so; the action was held to be maintainable, the completion of the subscription being necessary to enable the company to make the call, as being the ground of the action. *Norwich and Lowestoft Navigation v. Theobald*, 1 M. & M. 151. Defences of this sort, have latterly been discouraged, and that part of sec. 27, specifies what defences may be set up, materially reducing the ground.

In an action for calls by a Railway Company, the terms of the act required it to be first proved that the party was a shareholder, and that due notice of calls had been given, the Court refused to the defendant to join with pleas denying those facts, and raising the question, that the calls were made for the purposes of the act, and after deviations from the terms granted, and that fewer shares had been allotted than required, as being against the policy as well as the terms of the act. *The London and Brighton Railway Company v. The Eastern Railway Company*, 13 M. & W. 100. And see, *The London and Brighton Railway Company v. The Eastern Railway Company*, 13 M. & W. 100. And see, *Leith Railway Company v. Hebblewhite*, 2 M. & W. 237, and 8 Dowl. 40.

The act gave a general form of declaration for calls, and that it should be only necessary to prove the declaration made, and notice given, the Court allowed only a defence of *nunq. indeb.*; that defendant was not a proprietor, and shares were forfeited and disallowed; others raising the question of the legality of the meeting of the directors when the calls were made, and stating that no notice had been given of the act, or time or place of payment appointed, and that the calls were not made for the purposes of the act, or upon the authority of the shareholders, or by competent persons, were disallowed. *Eastern Railway Company v. Hebblewhite*, 4 P. & D. 497.

In the former case, (*Brighton Railway Company v. Wilson*),

Tindal, C. J. says, "If we were to grant these pleas, we be deciding against the real meaning of the statute, which is that the money shall be recoverable in a certain way. With regard to the question, whether the calls were made with a proper object or not, that is a matter which the parties should settle privately among themselves, and which belongs to another forum and another place than a Court of law; and if they oppose the proceedings of their directors, it is their duty to discuss their objections at the general meeting of the subscribers, and if the day of general meeting is inconveniently distant, in twenty-one days a special general meeting for the purpose may be called. It seems to me, however, that it was not intended, that a question so general in its nature should be discussed in a public Court of justice. With regard to the plea alleging a deviation, and that the money is called for to defray expenses consequently incurred, what would be the effect of allowing such an answer? If any deviation, to the extent of three yards only, was made with the consent of the owner whose land adjoins the work, and a call was afterwards made, every person might stay his hand, refuse to pay the call, and the whole undertaking would be broken up altogether. Then, as to the other plea, that at the time of the calls being made there were not 36,000 shares in the company, the 136th section of the act provides, that the capital of the company shall be 1,800,000 divided into 36,000 shares of 50*l.* each. There may be 36,000 shares called into action, or for which subscribers have been found, but if there is this capital, the act says that it shall be divided into so many shares." Bosanquet, J.—"The consequences of allowing these defences would be, that if the company, which is established for certain purposes, should do one thing illegally which cost money, then a defendant, in an action as this, would be entitled to set up a defence, though the expense had been incurred, and that the calls were made for the purpose of the liquidation of the charge."

The following pleas were allowed by an order of Littleton in an action for calls:

1. Never indebted.
2. Defendants not proprietors of shares.
3. Before calls made they had sold them to R.
4. Before calls made, directors declared the shares for sale.
5. Calls not necessary.
6. No notice of them.
7. No time, &c. appointed for payment.
8. That defendants bought of a holder who had not paid the calls.

*Eastern Counties Railway Company v. Cooke and Others*, 1852, 15 *Q.B.* 250. An application was made to strike out the fourth plea, as it did not show that the forfeiture had been confirmed by the company, but the Court thought

point too doubtful. See *Edinburgh and Leith Railway Company v. Hebblewhite* *infra*. It appears that the fifth, sixth, and seventh pleas, at all events, would not now be allowed. In another case similar pleas were allowed, the only difference being that instead of the third plea in the last-mentioned case, the following was substituted, "That defendant was not an original proprietor, but bought from persons having no title, because they had no transfer from the original proprietors in the form required by the Act." *South Eastern Railway Company v. Fairclough*, 2 Railway Cases, 250.

Where the pleas were—

1. Never indebted.
2. Defendant not a proprietor.
3. By non-payment of previous calls, he had forfeited his shares before the making of the calls now sued for.
4. He had forfeited his shares and ceased to be a proprietor after the making of these calls, and before the commencement of the action.

The first and second only were allowed, the third being unnecessary, and the fourth contrary to the spirit and meaning of the act. *London and Brighton Railway Company v. Fairclough*, 6 Bing. N. C. 270.

And see *post* Addenda, as to the pleas which amount to the general issue; such pleas would not be allowed to be pleaded together with the general issue.

Notwithstanding the words of the above 27th section, that the company shall recover if certain things be proved, other defences than those specified may be available; for example, that after the call was made, the company have exercised their option of declaring the calls forfeited—a plea to that effect, however, must set out all circumstances necessary to show that a forfeiture has actually taken place: as that the declaration of forfeiture was affirmed at a general meeting, &c. *Edinburgh and Leith Railway Company v. Hebblewhite*, 6 M. & W. 707; 8 Dowl. 299.

The general form of declaration must be taken to have alleged all things necessary to be proved, and the defendant, by his plea, deny a fact necessary to be proved, (but not expressly alleged), but must conclude to the country. *Ibid*.

XXVIII. The production of the Register of Shareholders shall be *prima facie* evidence of such defendant being a shareholder, and of the number and amount of his shares (a). Proof of proprietorship.

(a) The Registry of Shareholders will not be vitiated for the purpose of evidence against a shareholder, by some irregularities with respect to the entry of other shareholders. See *Southampton Dock Company v. Richards*, and *Same v. Arnett*, 2 Rail-

way Cases, 215, 1 M. & Gr. 448; *West London Railway Company v. Bernard*, 3 Q. B. 873; 3 Railway Cases, 649. *Birmingham, Bristol, and Thames Junction Railway Company v. White*, 1 Q. B. 282. See *Same v. Locke*, 1 Q. B. 256. *London and Grand Junction Railway Company v. Freeman*, 3 Railway Cases, 468. *Same v. Graham*, 1 Q. B. 271. — *v. Gavestone*, ib. *Cheltenham Railway Company v. Paine*, C. & P. 58.

Where an act directed that the company should prepare a book of shareholders in a book to be kept by the secretary, and in an action for calls, the production of the book should be *prima facie* evidence of proprietorship, it was held to be no objection to the admissibility of the book produced as the book kept under the act, to prove the defendant a proprietor, that an irregularity or omission should be shewn to exist with respect to the entries relating to other shareholders; the provision as to the entries to be made in the book being directory only, and not essential. *Southampton Dock Company v. Richards*, 1 M. & Gr. 448. *London and Brighton Railway Company v. Fairclough*, 2 M. & Gr. 674; Law J. 1841, C. P. 133. *London and Grand Junction Railway Company v. Graham*. *Same v. Gunston*, 1 Q. B. 271. *Birmingham, Bristol and Thames Railway Company v. Locke*, 1 Q. B. 256. *London and Grand Junction Railway Company v. Freeman*, 2 Man. & Gr. 606. In the last case the book was held to be *prima facie* evidence, though irregularly kept, and it was held, that the holders of scrip certificates were properly entered before the passing of the act as proprietors in the undertaking, though they had neither signed the Parliamentary contract, nor been originally subscribers.

Also that this evidence was not rebutted by proof that a party was the original subscriber in respect of the share in question.

Where the statute directed that a deed of transfer should be kept by the company, and a memorial of it entered in a book, and such entry was made, with a memorial dated 7th April 1841, it was held, in an action for calls, that this was sufficient evidence of the time of the transfer, so as to make the defendant a proprietor from that date, without evidence to shew when the deed was, in fact, made. *The Birmingham and Aylesbury Railway Company v. Thompson*, Law J. 1841, Q. B. 124.

When a proprietor is sued for calls, he will not be allowed to inspect the company's books, particularly with respect to the calls sued upon, for the purpose of framing his plea. *Birmingham, Bristol, and Thames Junction Railway Company v. White*, 1 Q. B. 282. An allottee of shares in a provincial railway company, when called upon to pay money in respect of the shares allotted to him, is entitled to inspect the subscription agreement and Parliamentary contract, those deeds being

and control of the other party. *Steadman v. Arden*, 553. 7 Law Times, 261.

with respect to the forfeiture of shares for non-payment of calls, be it enacted as follows :

*Nonpay-  
ment of  
Calls.*

If any shareholder fail to pay any call due from him, together with the interest, if any, which may have accrued thereon, the directors, at any time after the expiration of two months from the day of the making for payment of such call, may declare the same to be due and payable forthwith, and may sue for the same, and may declare that whether the company have sued for the same or not (a).

*Forfeiture  
of shares  
for non-  
payment of  
calls.*

in persons proposing to solicit an act of incorporating docks, executed the usual parliamentary deed of management, by the first whereof they bound themselves (*inter alia*) to pay the sums subscribed by each of them and to appoint. By the second, they agreed to take all measures which the directors should think necessary for obtaining the act.

By the above purpose passed the House of Commons. An order of the House of Lords provides, that no bill (*inter alia*) a dock, shall be read a third time, unless the probable expense of the proposed work shall be defrayed by the subscribers. To comply with this order, and to raise the necessary capital, nine of the directors subscribed for nine additional shares each. The bill passed into law. It provided (sections 94 and 95), that ten or more persons holding a specified number of shares, might summon a meeting. Section 125—that subscribers should pay the same as the directors should appoint, which shares they might declare forfeited on non-payment of calls. It enabled holders of shares to sell them, and procure a writ of conveyance and memorial.

Of the shareholders, and amongst them the plaintiff, some held their shares, but the subscribers for the additional shares did not register. At the time of entering the additional subscriptions, the directors subscribing a memorandum, declaring that the additional shares were held in trust for the company. At a meeting of the company a resolution was passed, that the additional shares were held in trust for the company. At a special general meeting of the company a resolution was passed, that the trust for the company should be annulled, and that the shares should be transferred to the secretary; and at

a meeting of the directors such resolution was confirmed. The directors made two calls, which the registered shares, but not on the additional shares, call having been made, and the plaintiff not having paid, the directors were proceeding to declare his shares to be forfeited.

It was held, that the transfer of the additional shares by the secretary of the company, without the specified conveyance and memorial, was void; that the directors could enforce the penalties imposed by the act, on the shares, on the third call on the plaintiff's shares, until they took steps to compel payment of the first two calls on the shares.

That a suit for restraining the directors from declaring the plaintiff's shares forfeited was well framed by the plaintiff on behalf of himself, and all other the members not in arrears, against those parties as defendants who had subscribed for additional shares. *Preston v. The Grand Colliery Company*, 2 Railway Cases, 335.

Notice of forfeiture to be given before declaration thereof.

XXX. Before declaring any share for forfeiture the directors shall cause notice of such intention to be left at or transmitted by the post to the usual place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be a foreigner, and if his usual or last place of abode be not known to the directors, by reason of its being imperfectly entered in the Shareholders' Address Book, or otherwise, then if the interest in any such share shall be transferred to the directors to have become transmitted to them than by transfer, as herein-before mentioned, then a declaration of such transmission shall not be valid unless registered as aforesaid, and so the directors shall give notice to the parties to whom the same may have been transferred, or may for the time being belong, shall not be valid unless given to the directors, the directors shall give public notice of such intention in the *London* or *Dublin* Gazette, according as the company's principal place of business shall be situate in England or Ireland, or in some newspaper, as after-mentioned, and several notices aforesaid shall be given in the said newspapers seven days at least before the directors shall declare the share to be forfeited.

XXXI. The said declaration of forfeiture shall not have effect so as to authorize the sale or other disposition of any share until such declaration shall have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and in order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

Forfeiture to be confirmed by a general meeting.

XXXII. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

Sale of forfeited shares.

XXXIII. A declaration in writing, by some credible person not interested in the matter, made before any justice, or before any master or master extraordinary of the High Court of Chancery, that a call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner herein-before required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected

Evidence as to forfeiture of shares.

by any irregularity in the proceedings to such sale.

No more shares to be sold than sufficient for payment of calls.

XXXIV. The company shall not sell more of the shares of any such defaulter sufficient, as nearly as can be ascertained of such sale, to pay the arrears then due to the defaulter on account of any calls, together with the interest and the expenses attending such declaration of forfeiture; and if the money by the sale of any such forfeited shares is not sufficient to pay all arrears of calls thereon due at the time of such sale, the expenses attending the declaration of forfeiture thereof, the surplus shall, on demand, be paid to the defaulter.

On payment of calls before sale the forfeited shares to revert.

XXXV. If payment of such arrears interest and expenses be made before the shares are forfeited and vested in the company shall be sold, such share shall revert to the person to whom the same belonged before such forfeiture in the same manner as if such calls had been duly paid.

*Remedies against shareholders*

And with respect to the remedies of the company against the shareholders, as follows:

Execution against shareholders to the extent of their shares in capital not paid up.

XXXVI. If any execution, either at law or in equity, shall have been issued against the effects of the company, and if there can be found sufficient whereon to levy such execution, no execution may be issued against any shareholder to the extent of their shares in the capital of the company not then paid up, provided always, that no such execution shall be issued against any shareholder except upon a writ of *facias* issued by a court in which the action, suit, or other proceeding shall have been brought or instituted, and after a judgment or motion in open court after sufficient notice in writing to the persons sought to be compelled to pay.



Upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee (a).

(a) *Quere.* Whether a *scire facias* may be necessary to obtain execution against individual shareholders, *ex parte Buffin*, 6 Ves. 247. *Bolton v. Puller*, 1 Bos. & Pull. 547. *Clowes v. Brettell*, 11 M. & W. 506; Law J., 1843, Exch. 8. *Wingfield v. Barclay*, 2 Dowl. N. S. 355. *Eardley v. Law*, 12 A. & E., 802. *Wingfield v. Bosanquet*, 12 A. & E. 813. *Wingfield v. Peel*, Law J., 1843, Q. B., 102. *Bradley v. Eyre*, 12 L. J., N. S., 450. *Phillipson v. The Earl of Egremont*, 14 Id. Q. B.

XXXVII. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of his share, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company. Reimbursement of such shareholder.

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows: Power to borrow money.

XXXVIII. If the company be authorized by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special act, and securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned (a). Power to borrow money.

(a) Where the act authorised a company "to assign and

charge the property of the undertaking and the rate as a security for money borrowed under the act, mortgage was there given, assigning "to A.B., administrators, and assigns the said undertaking singular the rates and tolls, and all the estate, right and interest of and in the same"—it was held, that the prescribed form did not pass any of the conditions. *Doe dem. Myatt v. The St. Helen's and Runcorn Railway Company*, 1 Gale and D. 663. See *Perkins* 3 Railway Cases, 95.

Power to  
reborrow.

XXXIX. If, after having borrowed any money so authorized to be borrowed on any bond, the company pay off the same, it shall be lawful for them again to borrow the amount so repaid, so from time to time; but such power of borrowing shall not be exercised without the authority of a general meeting of the company, unless the money so reborrowed in order to pay off any existing debt or mortgage or bond.

Evidence of  
authority  
for borrow-  
ing.

XL. Where by the special act the company shall be restricted from borrowing any money on any bond or until a definite portion of their capital shall be subscribed or paid up, or where by this special act the authority of a general meeting shall be required for such borrowing, the certificate of a surveyor of the company that such definite portion of the capital has been subscribed or paid up, and a copy of the resolution of the general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true and correct copy, shall be sufficient evidence of the fact of the capital being so subscribed or paid up having been so subscribed or paid up, and of the order for borrowing having been made; and upon production of the books of the company, and of such other evidence as he shall think sufficient, such certificate shall be granted the certificate aforesaid.

Mortgages

XLI. Every mortgage and bond for

borrowed by the company shall be by deed and bonds  
 the common seal of the company, duly to be  
 , wherein the consideration shall be truly stamped.  
 and every such mortgage deed or bond may  
 ding to the form in the schedule (C.) or (D.)  
 at annexed, or to the like effect.

The respective mortgagees shall be en- Rights of  
 e with another to their respective propor- mortgagees  
 the tolls, sums, and premises comprised in  
 tgages, and of the future calls payable by  
 holders, if comprised therein, according to  
 ctive sums in such mortgages mentioned  
 vanced by such mortgagees respectively,  
 repaid the sums so advanced, with interest,  
 ny preference one above another by reason  
 of the date of any such mortgage, or of the  
 at which the same was authorized.

No such mortgage (although it should Application  
 future calls on the shareholders) shall, un- of calls, not-  
 less so provided, preclude the company withstand-  
 iving and applying to the purposes of the ing mort-  
 any calls to be made by the company. gage.

The respective obligees in such bonds Rights of  
 proportionally according to the amount of obligees.  
 es secured thereby, be entitled to be paid,  
 ie tolls or other property or effects of the  
 the respective sums in such bonds men-  
 id thereby intended to be secured, without  
 ence one above another by reason of priority  
 any such bond, or of the meeting at which  
 was authorized, or otherwise howsoever (a).

ie case of *Hill v. The Manchester and Salford Water-*  
*pany*, 1 B. & Ad. 544, a clause empowering a com-  
 raise money by bonds, and enacting that every holder  
 ould be equally entitled to a claim or lien on the  
 sums of money to be taken by virtue of the act, in  
 to the amount advanced by such holders, as if the

same had been advanced upon mortgages or grantable by the act," without any preference by priority of date of any such securities, or any whatever" was held not to prevent an individual from suing on his bond though there were other mortgages, &c. unsatisfied; the lien given being only security—under this section, however, "*obligees be paid the amount of the monies secured out of other property and effects of the company, without recourse, &c.*" These words seem to take away the priority on a bond if other bonds be unsatisfied.

Register of mortgages and bonds.

XLV. A register of mortgages and bonds to be kept by the secretary, and within four months after the date of any such mortgage or bond or memorial, specifying the number and date of the mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with proper additions, shall be made in such register, and such register may be perused at all reasonable times by any of the shareholders, or by any mortgage or bond creditor of the company, or by any person interested in any such mortgage or bond, or reward.

Transfers of mortgages and bonds to be stamped.

XLVI. Any party entitled to any such mortgage or bond may from time to time transfer the same and interest therein to any other person; such transfer shall be by deed duly stamped, and the consideration shall be truly stated; such transfer may be according to the form in the schedule (E.) to this act annexed, or to any other effect.

Transfers of mortgages and bonds to be registered.

XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days of the arrival thereof in the United Kingdom, the deed shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry

transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

XLVIII. The interest of the money borrowed on any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company. Payment of interest on monies borrowed.

XLIX. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped. Transfers of interest to be stamped.

L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal place or place of business of the company. Repayment of money borrowed at a time fixed.

LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at any time after the expiration of the period, require the repayment of the money so borrowed, where no time fixed. Repayment of money borrowed where no time fixed.

at twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving three months notice: and every such notice shall be in writing, in print, or by bill, and if given by a mortgagee or bond creditor shall be delivered to the secretary or the principal officer of the company, and if given to the company shall be given either personally to the mortgagee or bond creditor or left at his residence; and if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London* or *Dublin Gazette*, according as the principal office of the company shall be in England or Ireland, and in some newspaper as after mentioned.

Interest to  
cease on  
expiration  
of notice to  
pay off  
mortgage or  
bond.

LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off, then at the expiration of such notice all future interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of  
interest,  
when to be  
enforced by  
appoint-  
ment of a  
receiver.

LIII. Where by the special act the mortgagee or the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or

y, require the appointment of a receiver, by an application to be made as hereinafter provided; and within six months after the principal money owing on any such mortgage has become payable, and on demand thereof in writing, the same be not paid by the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagors whose debts, being so in arrear, after demand thereof, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, application to be made as hereinafter provided.

Arrears of principal and interest.

Every application for a receiver in the cases aforesaid shall be made to two justices, and on any application it shall be lawful for such justices, acting in writing, after hearing the parties, to appoint some person to receive the whole or a part of the tolls or sums liable to the payment of interest, or such principal or interest, as the case may be, until such interest, or until such principal or interest, as the case may be, together with all charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment made, all such tolls and sums of money as shall be paid to and received by the person appointed; and the money so to be received or so much money received by or to the use of any person to whom such interest, or such principal or interest, as the case may be, shall be then due, on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the appointment of such receiver shall cease.

Appointment of a receiver.

At all seasonable times the books of account of any company shall be open to the inspection of the

Access to account-

books by  
mortgagees.

respective mortgagees and bond creditors ~~there~~ ~~with~~ with liberty to take extracts therefrom, with ~~cost~~ or reward.

### *Loans.*

Power to  
convert  
loan into  
capital.

And with respect to the conversion of the ~~lo~~ borrowed money into capital, be it enacted as follo ~~ws~~.

LVI. It shall be lawful for the company, ~~if~~ ~~th~~ think fit, unless it be otherwise provided ~~by~~ ~~th~~ special act, to raise the additional sum so auth ~~oriz~~ to be borrowed, or any part thereof, by creating ~~ne~~ shares of the company, instead of borrowing ~~of~~ same, or, having borrowed the same, to continue ~~the~~ interest only a part of such additional sum, ~~and~~ raise part thereof by creating new shares; ~~but~~ such augmentation of capital as aforesaid shall ~~be~~ place without the previous authority of a gene meeting of the company.

New shares  
to be con-  
sidered  
same as  
original  
shares.

LVII. The capital so to be raised by the crea of new shares shall be considered as part of general capital, and shall be subject to the provisions in all respects, whether with reference the payment of calls, or the forfeiture of shares nonpayment of calls, or otherwise, as if it had be part of the original capital, except as to the time of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

If old  
shares at  
premium  
new shares  
to be  
offered to  
the share-  
holders.

LVIII. If at the time of any such augmentation of capital taking place by the creation of new share the then existing shares be at a premium, or of greater actual value than the nominal value thereof then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then share-holders in proportion to the existing shares held by them respectively; and such new shares shall be



to the then shareholders in the proportion ; and such offer shall be made by letter in the hand of the secretary given to or sent by express to each shareholder according to his name in the shareholders' address book, or left at his usual or last place of abode.

The said new shares shall vest in and be taken by the shareholders who shall accept the offer, and pay the value thereof to the company at once, and by the instalments which shall be fixed by the directors; and if any shareholder fail for six months after such offer of new shares to accept the offer, and pay the instalments called for in respect thereof, it shall be lawful for the company to sell or dispose of such shares in such manner as they may think most for the advantage of the company.

Shares to vest in the parties accepting: otherwise to be disposed of by the directors.

At the time of such augmentation of capital, if not at a premium, the existing shares be not at a premium, then such new shares may be of such value as the company think fit, and may be issued in such manner and on such terms as the company shall think fit.

If not at a premium, to be issued as company think fit.

With respect to the consolidation of the stock, be it enacted as follows :

*Consolidation of shares.*

It shall be lawful for the company from time to time, with the consent of three-fifths of the shareholders present in person or by proxy at any general meeting of the company, when a resolution for that purpose shall have been given, to convert or consolidate all or any part of the capital existing in the capital of the company, and the amount whereof the whole money subscribed has been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

Power to consolidate shares into stock.

After such conversion or consolidation has been taken place, all the provisions contained in the Act of stock

Proprietors of stock

may trans-  
fer the  
same.

in this or the special act which require or in  
that the capital of the company shall be divided  
into shares of any fixed amount, and distinguished  
by numbers, shall, as to so much of the capital  
shall have been so converted or consolidated in  
stock, cease and be of no effect, and the several  
holders of such stock may thenceforth transfer the  
respective interests therein, or any parts of such  
interests, in the same manner and subject to the  
same regulations and provisions as or according to  
which any shares in the capital of the company may  
be transferred under the provisions of this or of any  
special act; and the company shall cause an entry  
to be made in some book, to be kept for that purpose  
of every such transfer; and for every such entry the  
company may demand any sum not exceeding the prescribed  
amount, or if no amount be prescribed a sum not  
exceeding two shillings and sixpence.

Register of  
stock.

LXIII. The company shall from time to time  
cause the names of the several parties who may be  
interested in any such stock as aforesaid, with the  
amount of the interest therein possessed by them  
respectively, to be entered in a book to be kept for  
the purpose, and to be called "The Register of  
Holders of Consolidated Stock;" and such book  
shall be accessible at all seasonable times to the  
several holders of shares or stock in the undertaking.

Proprietors  
of the stock  
entitled to  
dividends.

LXIV. The several holders of such stock shall be  
entitled to participate in the dividends and profits of  
the company, according to the amount of their re-  
spective interests in such stock, and such interests  
shall, in proportion to the amount thereof, confer on  
the holders thereof respectively the same privileges  
and advantages, for the purpose of voting at meet-  
ings of the company, qualification for the office of  
directors, and for other purposes, as would have  
been conferred by shares of equal amount in the

of the company, but so that none of such  
 as or advantages, except the participation in  
 dividends and profits of the company, shall be  
 l by any aliquot part of such amount of  
 ted stock as would not, if existing in shares,  
 rferred such privileges or advantages re-  
 r.

And be it enacted, that all the money raised *Application*  
 ompany, whether by subscriptions of the *of capital.*  
 ers, or by loan or otherwise, shall be applied,  
 paying the costs and expenses incurred in  
 the special act, and all expenses incident  
 id, secondly, in carrying the purposes of the  
 nto execution.

h respect to the general meetings of the *General*  
 and the exercise of the right of voting by *meetings.*  
 olders, be it enacted as follows :

The first general meeting of the share-  
 the company shall be held within the pre-  
 ie, or if no time be prescribed, within one  
 er the passing of the special act, and the  
 eral meetings shall be held at the pre-  
 riods, and if no periods be prescribed, in  
 s of February and August in each year, or  
 er stated periods as shall be appointed for  
 se by an order of a general meeting ; and  
 ings so appointed to be held as aforesaid  
 elled " Ordinary Meetings ;" and all meet-  
 ther ordinary or extraordinary, shall be  
 e prescribed place, if any, and if no place  
 ed, then at some place to be appointed by  
 rs.

*Ordinary  
 meetings to  
 be held  
 half-yearly.*

No matters, except such as are appointed *Business at*  
 the special act to be done at an ordinary *ordinary*  
 shall be transacted at any such meeting, *meetings.*  
 cial notice of such matters have been given  
 ertisement convening such meeting.

Extraordi-  
nary meet-  
ing.

LXVIII. Every general meeting of shareholders, other than an ordinary meeting called an "Extraordinary Meeting;" and meetings may be convened by the directors as they think fit,

Business at  
extraordi-  
nary meet-  
ings.

LXIX. No extraordinary meeting shall have any business not set forth in the notice and shall have been convened.

Extraordi-  
nary meet-  
ings may be  
required by  
share-  
holders.

LXX. It shall be lawful for the prescriber of shareholders, holding in the aggregate not less than the prescribed amount, or, where the prescribed amount of shares shall be subscribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by their hands, at any time to require the directors to call an extraordinary meeting of the company, and such requisition shall fully express the meeting required to be called, and shall be deposited at the office of the company, or given to the directors, or left at their last or usual place of business, and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after the receipt of such requisition the directors fail to call such meeting, then any shareholder, or such other number as aforesaid, qualified as aforesaid, may call a meeting by giving fourteen days' public notice to the directors.

(a) It seems that this and other clauses relating to the regulation of a company are directory only and not compulsory, at least where accident may make compliance with the words of the act impossible. If, for example, the number of directors were reduced below three, the directors would not be deprived of the power of calling a meeting. See judgment of the Vice Chancellor in *Re the London and North Western Railway Co. (No. 2)*, 2 Hare, 496; other cases are there suggested. The company not having an office of their own, however, since the passing of the Joint Stock Companies Act, 1845, cannot arise.

Fourteen days' public notice at the least of <sup>Notice of</sup> meetings, whether ordinary or extraordinary, shall <sup>meetings</sup> be by advertisement, which shall specify the day, and the hour of meeting; and every extraordinary meeting, or of an ordinary if any other business than the business by the special act appointed for ordinary is to be done thereat, shall specify the purpose which the meeting is called.

In order to constitute a meeting (whether <sup>Quorum for</sup> ordinary or extraordinary) there shall be present, <sup>a general</sup> personally or by proxy, the prescribed quorum, <sup>meeting.</sup> if no quorum be prescribed then shareholders the aggregate not less than one-twentieth part of the company, and being in number not less than one for every five hundred pounds of paid-up proportion of capital, unless such number should be more than twenty, in which case shareholders holding not less than one-twentieth part of the capital of the company, shall be the meeting, and if within one hour from the time appointed for such meeting the said quorum be not present, no business shall be transacted at the meeting, except the declaring of a dividend, in case that it be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held *sine die*.

At every meeting of the company one <sup>Chairman</sup> of the following persons shall preside as <sup>at general</sup> that is to say, the chairman of the directors, <sup>meetings.</sup> in his absence the deputy chairman (if any), in the absence of the chairman and deputy chairman, one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of the directors, any shareholder to be chosen for that purpose by a majority of shareholders present at the meeting.

Business at  
meetings  
and ad-  
journ-  
ments.

LXXIV. The shareholders present at meeting shall proceed in the execution of the business of the company with respect to the matters which at such meeting shall have been convened, and adjourned only; and every such meeting may be adjourned from time to time, and from place to place, and any business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Votes of  
share-  
holders.

LXXV. At all the general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and if no scale shall be prescribed, every shareholder shall have one vote for every share up to ten, and one additional vote for every five shares above the first ten shares held by him up to one hundred, and one additional vote for every ten shares above the first hundred shares; and always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all calls then due upon the shares held by him.

Manner of  
voting.

LXXVI. The votes may be given either in person or by proxies, being shareholders, authorised by writing according to the form in the schedule to this act annexed, or in a form to the like effect under the hand of the shareholder nominating the proxy, or if such shareholder be a corporation under their common seal; and every proposal put at any such meeting shall be determined by a majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to a casting vote, not only as a principal and proxy, but also as a casting vote if there be an equality of votes.

(a) The concurrence of a majority of shareholders in conjunction with sec. 99, ratify many proceedings of directors, which, strictly speaking, are not authorised, and preclude the minority from objecting to them, provided the proceedings are voidable only and not void. See

Vice Chancellor in *Foss v. Harbottle*, 2 Hare, 461, on *Pratt v. The Grand Collier Dock Company*, cited in note to s. 29.

LXXVII. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used. Regulations as to proxies.

LXXVIII. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share without proof of the concurrence of the other holders thereof. Votes of joint share holders.

LXXIX. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor, he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy. Votes of lunatics and minors, &c.

LXXX. Whenever in this or the special act the assent of any particular majority of votes at any meeting of the company is required in order to authorize any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorizing such proceeding has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same. Proof of a particular majority of votes only required in the event of a poll being demanded.

*Appoint-  
ment and  
rotation of  
Directors.*

And with respect to the appointment and of directors, be it enacted as follows :

*Number of  
directors.*

LXXXI. The number of directors shall prescribed number.

*Power to  
vary the  
number of  
directors.*

LXXXII. Where the company shall be rized by the special act to increase or to the number of the directors, it shall be lay the company, from time to time, in general n after due notice for that purpose, to increas duce the number of the directors within t scribed limits, if any, and to determine the rotation in which such reduced or increased shall go out of office, and what number sh quorum at their meetings.

*Election of  
directors.*

LXXXIII. The directors appointed by the act shall, unless thereby otherwise provide tinue in office until the first ordinary meetir held in the year next after that in which the act shall have passed ; and at such meeting th holders present, personally or by proxy, ma continue in office the directors appointed special act, or any number of them, or may new body of directors, or directors to sup places of those not continued in office, the appointed by the special act being eligible : bers of such new body ; and at the first meeting to be held every year thereafter th holders present, personally or by proxy, sh persons to supply the places of the directors tiring from office, agreeably to the provisions after contained ; and the several persons el any such meeting, being neither removed qualified, nor having resigned, shall continu directors until others are elected in their hereinafter mentioned.

*Existing  
directors  
continued*

LXXXIV. If at any meeting at which an of directors ought to take place the prescribed



be present within one hour from the time for the meeting, no election of directors made, but such meeting shall stand adjourned following day at the same time and place ; and meeting so adjourned the prescribed quorum present within one hour from the time appointed for the meeting, the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting following year.

on failure  
of meeting  
for election  
of direc-  
tors.

XV. No person shall be capable of being a director unless he be a shareholder, nor unless he be of the prescribed number, if any, of shares ; nor shall any person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director ; and no director shall be capable of accepting any other office or place of trust or profit under any company, or of being interested in any contract with any company, during the time he shall be a director (a).

Qualifica-  
tion of  
directors.

Clause similar to this (*inter alia*) incapacitating any person from acting as a director, who should be directly or indirectly interested in any contract with the company, was held to qualify directors who were members of a Banking Company who were bankers and treasurers of the Railway Company and as such received and gave receipts for calls, and interest drawn by the directors, &c. *Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 574.

XVI. If any of the directors at any time appointed to his office shall accept or continue to accept any other office or place of trust or profit under any company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done by the company, or if such director at any time shall cease to be a holder of the prescribed number of shares in the company, then in any of the cases mentioned the office of such director shall become vacant.

Cases in  
which office  
of director  
shall be-  
come  
vacant.

vacant, and thenceforth he shall cease from acting as a director (a).

(a) A director on becoming bankrupt necessarily vacates office, being no longer a holder of shares. *Phelps v. L. A. & E.* 116. As to what conduct on the part of a director may authorize his being struck out of the list, see *W. Wilson*, 6 Scott, 540. A mere equitable mortgage of a director's office may not, perhaps, disqualify a director. *Cumming v. P.* 2 Y. & C. 496.

Shareholder of an incorporated joint stock company not disqualified by reason of contracts.

LXXXVII. Provided always, that no person being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special act; no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company.

Rotation of directors.

LXXXVIII. The directors appointed by the special act, and continued in office as aforesaid, or directors elected to supply the places of those removed as aforesaid, shall, subject to the provision herebefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree (as is to say),

At the end of the first year, after the first election of directors the prescribed number, and the number be prescribed one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office :

At the end of the second year the prescribed number, and if no number be prescribed one-third of the remaining number of such directors, to be determined in like manner, shall go out of office :

At the end of the third year the prescribed

ber, and if no number be prescribed the remainder of such directors shall go out of office :

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders ; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one-third of the directors, being those who have been longest in office shall go out of office, and their places shall be supplied in like manner ; nevertheless, every director retiring from office may be re-elected immediately at any future time, and after such re-election shall, in reference to the going out by rotation, be considered as a new director : Provided always, that if a prescribed number of directors be some number divisible by three, and the number of directors to be prescribed, the directors shall in each year determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

XXXIX. If any director die, or resign, or be disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the retiring directors, if they think proper so to do, may in his place some other shareholder, duly qualified to be a director ; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

Supply of occasional vacancies in office of directors.

And with respect to the powers of the directors, the powers of the company to be exercised only at a general meeting, be it enacted as follows :

*Powers of Directors.*

The directors shall have the management and attendance of the affairs of the company, and may lawfully exercise all the powers of the company except as to such matters as are directed by

Powers of the company to be exercised by the directors.

this or the special act to be transacted by a meeting of the company, but all the powers so exercised shall be exercised in accordance with and subject to the provisions of this and the special act, and the exercise of all such powers shall be subject also to the control and regulation of any meeting specially convened for the purpose, but so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

Powers of the company not to be exercised by the directors.

XCI. Except as otherwise provided by the special act, the following powers of the company, (that is to say,) the choice and removal of the directors, and the increasing or reducing of their number where authorized by the special act, the choice of auditors, the determination as to the remuneration of the directors, auditors, clerk, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, the declaration of dividends, shall be exercised at a general meeting of the company.

*Proceedings of Directors.*

Meetings of directors.

And with respect to the proceeding and liabilities of the directors, be it enacted as follows :

XCII. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper from time to time, and from place to place ; and at any time any two of the directors may require the clerk to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and where no quorum shall be prescribed there shall be present at the least one-third of the directors : and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as one of the directors.

XIII. At the first meeting of directors held at the passing of the special act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such meeting, and shall also, if they think fit, choose another director to act as deputy chairman for the same year; and if the chairman or deputy chairman die, resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he has been so elected would have been entitled to continue had death, resignation, removal, or disqualification not happened.

Permanent  
chairman  
of directors.

XIV. If at any meeting of the directors neither chairman nor deputy chairman be present, the directors present shall choose some one of their number to be chairman of such meeting.

Occasional  
chairman  
of directors.

V. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees such powers and authority as they may think fit, and may give to such committees power on behalf of the company to do all such acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them (a).

Committees  
of directors.

Powers of  
committees.

As to the power of directors, it has been recently decided that they have no right, without the concurrence of the shareholders, to amalgamate themselves with another company; although there may be no *mala fides* in the arrangement, and although it may appear to be for the mutual benefit of both companies. *Gilbert v. Cooper*. Canc. (July 4, 1846). 7 Law Rep. 446.

Meetings of  
committees.

XCVI. The said committees may meet at any time, and may adjourn from place to place as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers intrusted to them at a meeting at which there shall be present less than a quorum, or if no quorum be present, a quorum to be fixed for that purpose by the general body of directors; and at all meetings of committees one of the members present shall be appointed chairman; and all questions at meetings of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Contracts  
by com-  
mittee or  
directors,  
how to be  
entered  
into.

XCVII. The power which may be granted to such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised (that is to say,)

With respect to any contract which is to be made between private persons, would be required to be in writing, and under the authority of the committee or the directors may make such contract on behalf of the company in writing, signed by the committee under the common seal of the company, or in the same manner may vary or discharge the same:

With respect to any contract which is to be made between private persons, would be required to be in writing, and signed by the person or persons charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by the committee or any two of them, or any one of them, or any two of the directors, and in the same manner may vary or discharge the same.

With respect to any contract which,

between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same :  
 All contracts made according to the provisions contained shall be effectual in law, and shall bind upon the company and their successors, and all other parties thereto, their heirs, executors, administrators, as the case may be ; and on any suit in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

XCVIII. The directors shall cause notes, minutes, copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, (a) to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors ; and every such entry shall be signed by the chairman of such meeting ; and such entry, when signed, shall be received as evidence in all courts, before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

Proceedings to be entered in a book, and to be evidence.

*To be duly entered, &c.]* After the dismissal of a bill filed at a railway company, a supplemental bill was allowed to be filed for the purpose of enforcing the production of a certain

report which ought to have been entered in the books of company, and would, if so entered, have been evidence in former suit. *The Sheffield Canal Company v. The Sheffield and Rotherham Railway Company*, 23 Law J., ch. 25. 3 Railways Cases, 486. See note to sec. 27.

Informalities in appointment of directors not to invalidate proceedings.

XCIX. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such director or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if on such person had been duly appointed and was qualified to be a director (a).

(a) The Court will not in general inquire into the validity of the appointment of directors on summary application, (e.g. stay proceedings in an action for calls). *Thames Haven Dock Railway Company v. Hall*, 5 M. & Gr. 274. 3 Railways Cases, 441.

As to how far the acts of a set of persons professing to be directors and managers of a company may be valid, and the amount of acquiescence in their proceedings may deprive shareholders of the power of objecting to them, see the case, and *Thames Haven and Dock Company v. Rose*, 4 M. & Gr. 552. A bill was filed by two of the proprietors of shares in a company, incorporated by act of Parliament, on behalf of themselves and all the other proprietors of shares, except the defendants, against the five directors, (three of whom had become bankrupt) and against a proprietor who was not a director, and the solicitor and architect of the company, charging the defendants with effecting various fraudulent and illegal transactions, whereby the property of the company was misapplied, aliened, and wasted; affirming that there had ceased to be a sufficient number of qualified directors to constitute a board; that the company had no clerk or office; that in such circumstances, the proprietors had no power to take the property out of the hands of the defendants, or satisfy the liabilities or wind up the affairs of the company; praying that the defendants might be decreed to make good to the company the losses and expenses occasioned by the acts complained of; and praying the appointment of a receiver, to take and apply the property of the company in discharge of its liabilities, and secure the surplus: on demurrer, it was held that, upon the facts stated, the continued existence of a board of directors *de facto* must be intended; that the continued existence of the corporation



was not excluded by the allegations in the bill. *Foss v. Harbottle*, 2 Hare, 461.

C. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully exercising any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any (a).

Directors not to be personally liable.

Indemnity of directors.

(a) If the directors or managers of a company abuse their trust, a bill in equity may be filed against them by the shareholders, praying that they may be decreed to make good all losses and expenses sustained by their misconduct, &c.; in general it will be necessary for the shareholders to sue in their corporate character; in cases however, where an injury to a corporation by some of its members is without adequate remedy, except that of a suit by individual corporators in their private characters, they will be allowed to ask in that character the protection of those rights to which in their corporate character they were entitled. *Walworth v. Holt*, 4 Myl. & Cr. 19. *Foss v. Harbottle*, ante. On the subject of the powers and liabilities of directors and managers, see *Tyrrell v. Woolley*, M. & Gr. 809. *Fox v. Frith and another*, 10 M. & W. 131. *Lawes v. Pike*, Murphy & Hurlstone, 131. *Hancock v. Hodgson*, 4 Bing. 269.

**Auditors.** — And with respect to the appointment and duties of auditors, be it enacted as follows :

**Election of auditors.** CI. Except where by the special act auditors be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect a prescribed number of auditors, and if no number is prescribed, two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as herebefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

**Qualification of auditors.** CII. Where no other qualification shall be prescribed by the special act, every auditor shall hold at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

**Rotation of auditors.** CIII. One of such auditors (to be determined in the first instance by ballot between themselves, and if they shall otherwise agree, and afterwards by majority,) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such election shall, with respect to the going out of office by rotation, be deemed a new auditor.

**Vacancies in office of auditor.** CIV. If any vacancy take place among the auditors in the course of the current year, then at the next general meeting of the company the vacancy may, if the company think fit, be supplied by election of shareholders.

**Failure of meeting to elect auditors.** CV. The provision of this act respecting the election of an ordinary meeting at which directors ought to meet shall apply to the election of auditors.

shall apply *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed. elect auditor.

CVI. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet, fourteen days at least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided. Delivery of balance sheet, &c., by directors to auditors.

CVII. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be produced to the shareholders, and to examine the same. Duty of auditors.

CVIII. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting. Powers of auditors.

And with respect to the accountability of the officers of the company, be it enacted as follows: Accountability of Officers.

CIX. Before any person intrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office. Security to be taken from officer intrusted with money.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all monies received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such monies shall have been disposed of; and together with such account such officer shall Officers to account, on demand.

deliver the vouchers and receipts for such and every such officer shall pay to the to any person appointed by them to receive all monies which shall appear to be owing upon the balance of such accounts.

Summary  
remedy  
against  
parties fail-  
ing to ac-  
count.

CXI. If any such officer fail to render account, or to produce and deliver up all vouchers and receipts relating to the same in his power, or to pay the balance thereof when required, or if for three days after being required he fail to deliver up to the directors any person appointed by them to receive all papers and writings, property, effects and things, in his possession or power, in pursuance of the execution of this or the special act incorporated therewith, or belonging to the company, then on complaint thereof being made to any justice of the peace, such justice shall summon such officer to appear before two or more justices at a time and place set forth in such summons, to answer and defend the same, and upon the appearance of such officer, or his default, and upon proof that such summons was served upon him, or left at his last known abode, such justices may hear and determine the matter in a summary way, and may adjust the balance owing by such officer; and either upon confession of such officer or his default, or upon inspection of the accounts and monies of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same, or if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same, or in default thereof, to commit the officer to prison there to remain without bail for a period not exceeding three months, unless the same be sooner

Officers re-  
fusing to  
deliver up  
documents,

CXII. If any such officer refuse to make account in writing, or to produce and deliver up to the several vouchers and receipts

hereto, or to deliver up any books, papers, or writings, property, effects, matters, or things in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company. &c., to be imprisoned.

**CXIII.** Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing a summons, to issue his warrant for the bringing of such officer before such two justices as aforesaid; but the person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he thinks there is no sufficient ground for his detention, or to order such officer to be detained in custody, so long as he shall be brought before two justices, at a time and place to be named in such order, unless such officer shall give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company. Where officer about to abscond, a warrant may be issued in the first instance.

**XIV.** No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer. Sureties not to be discharged.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, as enacted as follows: *Accounts.*

Accounts to  
be kept.

CXV. The directors shall cause f  
accounts to be kept of all sums of mone  
expended on account of the company t  
tors and all persons employed by or und  
of the matters and things for which  
money shall have been received or disbur

Books to be  
balanced.

CXVI. The books of the company  
lanced at the prescribed periods, and  
be prescribed, fourteen days at least  
ordinary meeting; and forthwith on the  
so balanced an exact balance sheet shall  
which shall exhibit a true statement o  
stock, credits, and property of every  
belonging to the company, and the  
the company at the date of making s  
sheet, and a distinct view of the profit  
shall have arisen on the transactions of  
in the course of the preceding half-ye  
viously to each ordinary meeting such  
shall be examined by the directors, or  
their number, and shall be signed by the  
deputy chairman of the directors.

Inspection  
of accounts  
by share-  
holders at  
stated  
times.

CXVII. The books so balanced, t  
such balance sheet as aforesaid, shall  
scribed periods, and if no periods be p  
fourteen days previous to each ordin  
and for one month thereafter, be open fo  
tion of the shareholders at the princi  
place of business of the company; bu  
holders shall not be entitled at any tim  
ring the periods aforesaid, to demand t  
of such books, unless in virtue of a  
signed by three of the directors (a).

(a) A defendant in an action for calls will no  
inspect the company's books for the purpose of f  
*Birmingham, Bristol, and Thames Junction Ra*  
v. *White*, 1 Q. B. 282.

Balance

CXVIII. The directors shall produce

holders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided. sheet to be produced at the meeting.

CXIX. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose, and every such book-keeper shall permit any shareholder to inspect such books and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds. Book-keeper to allow inspection of the accounts at the appointed times.

And with respect to the making of dividends, be it enacted as follows: Dividends.

CXX. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting; and at such meeting a dividend may be declared according to such scheme. Previously to declaration of dividends, a scheme to be prepared.

CXXI. The company shall not make any dividend whereby their capital stock will be in any degree reduced: provided always, that the word "dividend" shall not be construed to apply to a return of any capital. Dividend not to be made so as to reduce capital.

portion of the capital stock, with the the mortgagees and bond creditors of due notice being given for that purpose ordinary meeting to be convened for the

Power to directors to set apart a fund for contingencies.

CXXII. Before apportioning the provided among the shareholders the directors they think fit, set aside thereout such sum as they may think proper to meet contingencies for enlarging, repairing, or improving the works with the undertaking, or any part thereof; and divide the balance only among the shareholders.

Dividend not to be paid unless all calls paid.

CXXIII. No dividend shall be paid on any share until all calls then due in respect of such share and every other share held by the person to whom such dividend may be payable shall have been paid.

*Bye Laws.*

And with respect to the making of bye laws enacted as follows :

Power to make bye laws for the officers of the company.

CXXIV. It shall be lawful for the directors from time to time to make such bye laws as may be necessary for the purpose of regulating the conduct of the officers and servants of the company and providing for the due management of the company in all respects whatsoever, and from time to time to alter or repeal any such bye laws or to make others, provided such bye laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act ; and such bye laws shall be reduced into writing, and shall have the common seal of the company ; and copies of such bye laws shall be given to every officer and servant of the company affected thereby (a).

(a) It is not in the power of a company by any bye laws, even if passed unanimously, to extend the powers conferred upon them by the instrument of incorporation.

Thus, where four projectors of a public corporation



by which they and all persons who might become subscribers were incorporated, the capital being declared to be to be divided into four hundred shares, and before any subscribers had joined, the four projectors, by common consent divided the four hundred shares among themselves, and gave to the company (as was alleged) for 12,000*l.* and not for 10,000*l.*, and afterwards distributed the shares: a bill being brought and filed by the corporation against the projectors, impeaching the transaction, and to compel them to pay the full value of the shares; it was held, that though at the time they were persons interested in the company, yet it was not competent for them to take the shares without paying the full consideration. *Society of Practical Science v. Abbott*, 2 Beav. 430. *Smith v. Goldsworthy*, 4 Q. B. 430. *Child v. The Bay Company*, 2 P. Wms. 269.

A company is empowered to make bye-laws under seal, and resolutions are generally inoperative. Thus, where a company having such power passed a resolution (not under seal) that the directors should have a certain remuneration for their services, it was held that a director could not maintain an action for such remuneration according to the resolution, for it was not a bye-law within the statute; nor could it be treated as such (supposing as such it need not have been under seal) to entitle the directors for their attendances; nor could the directors be considered entitled as servants of the company to be remunerated for their labour according to its bye-laws. *Hunstan and others v. Imperial Gas Company*, 3 B. & Ad. 315.

A mere resolution or vote, however, authorising the directors to execute a deed on behalf of the company need not be under seal, although by the statute all orders "for the management of the company and regulating the proceedings of the directors" must have been under seal. *Clarke v. Imperial Gas and Coke Company*, 4 B. & Ad. 315.

Resolutions at meetings, &c., will be presumed to have been passed and conducted unless the contrary appear, and it is for the benefit of the company to avail himself of irregularities to prove them.—

V. It shall be lawful for the company by its bye-laws, to impose such reasonable penalties on persons, being officers or servants of the company, offending against such bye laws, as the directors shall think fit, not exceeding five pounds for any offence.

Fines for breach of such bye laws.

VI. All the bye laws to be made by the company shall be so framed as to allow the justice of the law to be so framed as

that penalties may be mitigated. before whom any penalty imposed there sought to be recovered to order a part of penalty to be paid, if such justice shall thi

Evidence of bye laws. CXXVII. The production of a written copy of the bye laws of the company, common seal of the company affixed thereto, shall be sufficient evidence of such bye laws in prosecution under the same.

*Arbitration.*

Appointment of arbitrator, when questions are to be determined by arbitration.

And with respect to the settlement of arbitration be it enacted as follows :

CXXVIII. When any dispute authorized by this or the special act, or any order made thereunder, to be settled by arbitration shall have arisen, then, unless both parties shall agree in the appointment of a single arbitrator, on the request of the other party, the party making the request shall nominate and appoint an arbitrator to whom such dispute shall be referred, and after any such appointment shall be made neither party shall have power to appoint another arbitrator without the consent of the other, and the death of either party shall operate as such appointment, and if for the space of fourteen days after the dispute shall have arisen, and after a written demand shall have been served by the party making the request on the other party to appoint an arbitrator, and the other party fail to appoint such arbitrator, upon such failure the party making the request shall have himself appointed an arbitrator, and such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute ; and the award or determination of such arbitrator shall be final.

Vacancy of arbitrator to be supplied.

CXXIX. If before the matters so referred to arbitration be determined any arbitrator appointed by either party shall die, or become incapable or re

seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

CXXX. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall both with after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final. Appoint-  
ment of  
umpire.

CXXXI. If in either of the cases aforesaid the arbitrators shall refuse, or shall, for seven days neglect to request of either party to such arbitration, to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to such arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final. Board of  
Trade em-  
powered to  
appoint an  
umpire, on  
neglect of  
the arbitra-  
tors, in case  
of railway  
companies.

CXXXII. The said arbitrators or their umpire may have power for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses Power of  
arbitrators  
to call for  
books, &c.

on oath, and administer the oaths necessary for that purpose.

Costs to be in the discretion of the arbitrators.

**CXXXIII.** Except where by this act, or any act incorporated therewith otherwise provided, the costs of and a such arbitration to be determined by it shall be in the discretion of the arbitrators, as the case may be.

Submission to arbitration to be made rule of Court.

**CXXXIV.** The submission to any arbitration may be made a rule of any of the superior Courts on the application of either of the parties.

*Notices.*

And with respect to the giving of notices enacted as follows :

Service of notices upon company.

**CXXXV.** Any summons or notice, or other proceeding, at law or in equity, may be served upon the company, may be served by being left at, or transmitted through the principal office of the company, or by being given personally to the secretary or being given personally to the secretary if there be no secretary then by being given to the director of the company.

Service by company on shareholders.

**CXXXVI.** Notices requiring to be served upon the shareholders may, unless otherwise required to be served personally, be served by being transmitted through the post according to the registered address or the address of the shareholder, within such period as may be admitted of its being delivered in the due time, and the giving of such notice ; and in proving that such notice was properly directed, and that it was so put in the post, it shall be sufficient to prove that such notice was so put in the post.

Notices to

**CXXXVII.** All notices directed to

Shareholders shall, with respect to any share to which joint proprietors of shares are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

CXXXVIII. All notices required by this or the special act, or any act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated. Notices by advertisement.

CXXXIX. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print. Authentication of notices.

CXL. And be it enacted, that if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in proceedings against the estate of such bankrupt insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and of such company. Proof of debts in bankruptcy.

CXLI. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or by virtue of any power or authority Tender of amends.

thereby given, and if, before action brought thereof, such party make tender of amends to the party injured, such last party shall not recover in any such action unless such tender shall have been made in a lawful manner for the defendant, by leave of the court. If such action shall be pending, at any time after the defendant is joined, to pay into court such sum of money as the court shall think fit; and thereupon such proceedings may be had as in other cases where defendants are ordered to pay money into court.

*Recovery of  
Damages  
and Penalties.*

And with respect to the recovery of damages specially provided for, and penalties, be it enacted, that it shall follow :

*Provision  
for damages  
not otherwise  
provided for.*

CXLII. In all cases where any damages or expenses are by this and the special act incorporated therewith, directed to be paid, and the method of ascertaining the amount of the payment thereof is not provided for, the amount, in case of dispute, shall be ascertained by two justices; and if the amount so ascertained be not paid by the company or party liable to pay the same within seven days of demand, the amount may be recovered by distress of the goods of the company or other party aforesaid; and the justices by whom the amount shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

*Distress  
against the  
treasurer.*

CXLIII. If sufficient goods of the company shall be found whereon to levy any such damages or expenses, payable by the company, the sum of the amount thereof do not exceed twenty pounds, the same may be recovered by distress of the goods of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall be levied on the goods of such treasurer unless seven days

in writing, stating the amount so due, and delivering payment thereof, have been given to such owner, or left at his residence ; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his hands or control, or he may sue the company for the same.

XLIV. Where in this or the special act, or any act incorporated therewith, any question of compensation, expenses, charges or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, and the case may require, at a time and place to be named in such summons ; and upon the appearance of both parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath ; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages, &c.

XLV. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or any act incorporated therewith, or by any bye laws of the company affecting other persons than the shareholders, officers, or servants of the company, and the amount of every such penalty, and shall cause the same to be painted on a board, or printed paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous place at the principal place of business of the company, where any of such penalties are of local applica-

Publication of penalties.

tion shall cause such boards to be affixed in so conspicuous place in the immediate neighbourhood which such penalties are applicable or have reference ; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed ; and no such penalty shall be recoverable unless it shall have been published and republished in the manner herein-before required.

Penalty for defacing boards used for such publication.

CXLVI. If any person pull down or injure a board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye laws or penalties, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence, a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

CXLVII. Every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices ; and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons ; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode ; and upon the appearance of the party complained against, or in his absence after proof of the due service of such summons, shall be lawful for two justices to proceed to the hearing of the complaint, and that although no written information in writing or in print shall have been exhibited before them, and upon proof of the offence either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to



ge the offender to pay the penalty or forfeiture  
 incurred, as well as such costs attending the conviction  
 as such justices shall think fit.

CLXVIII. If forthwith, upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Penalties  
 may be  
 levied by  
 distress.

CLXIX. It shall be lawful for any such justice to commit any offender so convicted as aforesaid to be detained and kept in safe custody until return can conveniently be made to the warrant of distress to be issued for levying such penalty or forfeiture, and unless the offender give sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice, wheron to levy such penalty or forfeiture, and he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

Imprison-  
 ment in  
 default of  
 distress.

L. Where in this or the special act, or any act incorporated therewith, any sum of money, whether of the nature of penalty or otherwise is directed to be

Distress  
 how to be  
 levied.

levied by distress, such sum of money shall by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus from the sale of such goods and chattels, after paying such sum of money, and the expenses of distress and sale, shall be returned on demand to the party whose goods shall have been distrained.

Distress not  
unlawful for  
want of  
form.

CLI. No distress levied by virtue of the special act, or any act incorporated therein, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, or warrant of distress, or other proceeding thereunto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity or defect committed by him, but all persons aggrieved by any defect or irregularity may recover full satisfaction of the special damage in an action upon the case.

Application  
of penalties.

CLII. The justices by whom any such penalty or forfeiture shall be imposed may, where no provision thereof is not otherwise provided for, award more than one-half thereof to the informer, and award the remainder to the overseers of the parish in which the offence shall have been committed, for the benefit of the poor of such parish; if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied for the benefit of the poor of such extra-parochial place, or of any adjoining parish or district, and shall cause the same to be paid over to the proper officer for that purpose.

Penalties to  
be sued for  
within six  
months.

CLIII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of the special act, or any act incorporated therein, for any offence made cognizable before a justice of the peace, unless a complaint respecting such offence shall have been made to the justice of the peace within six months after the commission of the offence.

before such justice within six months next after commission of such offence.

CLIV. If, through any act, neglect, or default, on ~~count~~ whereof any person shall have incurred any ~~penalty~~ imposed by this or the special act, or any ~~act~~ incorporated therewith, any damage to the property of the company shall have been committed by ~~that~~ person, he shall be liable to make good such ~~damage~~, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and ~~in~~ non-payment of such damages, on demand, the ~~same~~ shall be levied by distress, and such justices or ~~one~~ of them, shall issue their or his warrant accordingly.

Damage to be made good in addition to penalty.

CLV. It shall be lawful for any justice to summon ~~any~~ person to appear before him as a witness in any ~~matter~~ in which such justice shall have jurisdiction, ~~under~~ the provisions of this or the special act, or any ~~act~~ incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, ~~use~~ neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every ~~such~~ person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on witnesses making default.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be un-

Transient offenders.

known to such officer or agent, and convey him all convenient despatch, before some justice, or any warrant or other authority than this special act; and such justice shall proceed with convenient despatch to the hearing and determination of the complaint against such offender.

Form of conviction.

CLVII. The justices before whom any shall be convicted of any offence against this special act, or any act incorporated therewith, shall cause the conviction to be drawn up according to the form in the schedule (G.) to this act annexed.

Proceedings not to be quashed for want of form.

CLVIII. No proceeding in pursuance of the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior Courts.

Appeal.

Parties allowed to appeal to quarter sessions on giving security.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the next general quarter sessions for the county or district in which the cause of appeal shall have arisen; such appeal shall be entertained unless it be brought within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the grounds thereof, be given to the party to whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice of the peace, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

CLX. At the quarter sessions for which notice shall be given the court shall proceed to hear and determine the appeal in a summary manner.

may, if they think fit, adjourn it to the sessions; and upon the hearing of such a court may, if they think fit, mitigate any or forfeiture, or they may confirm or quash the conviction, and order any money paid by the party, or levied by distress upon his goods, to be repaid to him, and may also order such further compensation to be made to the party injured as they may think reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

With respect to the provision to be made for access to the special act by all parties interested, it enacted as follows:

The company shall, at all times after the expiration of six months after the passing of the act, keep in their principal office of business a copy of the special act, printed by the printers to the act, or some of them; and where the undertaking shall be a railway, canal, or other like work, the works of which shall not be confined to one town or place, shall also, within the first six months, deposit in the office of the clerk of the peace of the several parishes into which the works shall extend, and in the office of the town clerk of every burgh or city, and within one mile of which the works shall extend, a copy of such special act so printed and bound; and the said clerks of the peace and the town clerks shall receive, and they and the company respectively shall retain, the said copies of the act, and shall permit all persons interested in the same, and make extracts or copies of the same, in the like manner and upon the like conditions as are provided under the like penalty for default as is provided in the case of certain plans and sections, passed in the first year of the reign of her Majesty, intituled *An Act to compel Clerks of*

*Access to  
Special Act*

Copies of  
special act  
to be kept  
and deposi-  
ted, and al-  
lowed to be  
inspected.

**7 W. 4, & 1 Vict. c. 32.** *the Peace for Counties and other Persons to the custody of such Documents as shall be directed deposited with them under the Standing Orders of House of parliament.*

**Penalty on company failing to keep or deposit such copies.**

**CLXII.** If the company shall fail to keep posit as herein-before mentioned any of the copies of the special act, they shall forfeit pounds for every such offence, and also five for every day afterwards during which such shall be not so kept or deposited.

**Act not to extend to Scotland.**

**CLXIII.** And be it enacted, that this act shall extend to Scotland.

**For recovering calls against shareholders residing in Scotland.**

**CLXIV.** Provided always, and be it enacted if any shareholder residing in Scotland shall pay the amount of any call made upon him company in respect of any share held by him, be lawful for the company to proceed against Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in the manner as is by "The Companies Clauses Consolidation (Scotland) Act, 1845," in case the same shall pass into a law, provided in regard to shareholders of any company in Scotland.

**Act may be amended, &c.**

**CLXV.** And be it enacted, that this act may be amended or repealed by any act to be passed in any session of Parliament.



**SCHEDULES** referred to by the foregoing Act.

### **SCHEDULE (A.)**

#### *Form of Certificate of Share.*

"The \_\_\_\_\_ Company."  
 Number \_\_\_\_\_  
 is to certify, that *A. B.* of \_\_\_\_\_ is the  
 proprietor of the share number \_\_\_\_\_ of "The  
 \_\_\_\_\_ Company," subject to the regulations  
 of the said Company. Given under the common  
 seal of the said Company, the \_\_\_\_\_ day of  
 \_\_\_\_\_ in the year of our Lord \_\_\_\_\_.

### **SCHEDULE (B.)**

#### *Form of Transfer of Shares or Stock.*

\_\_\_\_\_ of \_\_\_\_\_ in consideration  
 the sum of \_\_\_\_\_ paid to me by  
 \_\_\_\_\_ of \_\_\_\_\_ do hereby  
 transfer to the said \_\_\_\_\_ share [or shares],  
 numbered \_\_\_\_\_ in the undertaking called  
 the \_\_\_\_\_ Company" [or  
 consolidated stock in the undertaking called  
 the \_\_\_\_\_ Company," standing (or  
 not of the stock standing) in my name in the books  
 of the company], to hold unto the said  
 executors, administrators, and assigns [or suc-  
 cessors and assigns], subject to the several condi-  
 tions on which I held the same at the time of the  
 execution hereof; and I the said \_\_\_\_\_  
 hereby agree to take the said share [or shares]  
 or stock], subject to the same conditions. As  
 witness our hands and seals the \_\_\_\_\_  
 day of \_\_\_\_\_.

## SCHEDULE (C.)

*Form of Mortgage Deed.*

“ The \_\_\_\_\_ Company.”  
 Mortgage, number \_\_\_\_\_ £  
 BY virtue of [*here name the special Act*  
 “ The \_\_\_\_\_ Company,” in consid  
 of the sum of \_\_\_\_\_ pounds paid  
 by A. B. of \_\_\_\_\_ do assign unto th  
 A. B., his executors, administrators, and as  
 the said undertaking, [*and (in case such loan  
 be in anticipation of the capital authorized  
 raised)* all future calls on shareholders], and  
 tolls and sums of money arising by virtue of the  
 act, and all the estate, right, title, and inter  
 the company in the same; to hold unto the  
 A. B., his executors, administrators, and as  
 until the said sum of \_\_\_\_\_ pounds, to  
 with interest for the same at the rate of \_\_\_\_\_  
 for every one hundred pounds by the ye  
 satisfied [the principal sum to be repaid at th  
 of \_\_\_\_\_ years from the date hereof (*in ca  
 period be agreed upon for that purpose*)], [at  
 \_\_\_\_\_  
*or any place of payment othe*  
*the principal office of the company*]. Given  
 our common seal, this \_\_\_\_\_ day of \_\_\_\_\_  
 in the year of our Lord.

## SCHEDULE (D.)

*Form of Bond.*

“ The \_\_\_\_\_ Company.”  
 Bond, number \_\_\_\_\_ £  
 BY virtue of [*here name the special Act*  
 “ The \_\_\_\_\_ Company,” in consid  
 of the sum of \_\_\_\_\_ pounds to us in han  
 by A. B. of \_\_\_\_\_, do bind ourselv  
 our successors unto the said A. B., his exe  
 administrators, and assigns, in the penal s



pounds.

The condition of the above obligation is such, that the said company shall pay to the said *A. B.*, his executors, administrators, or assigns, [at

(*in case any other place of payment than the principal office of the Company be intended*),]

the day of which will

in the year one thousand eight hundred and

, the principal sum of

together with interest for the same at the

of pounds per centum per annum,

payable half-yearly on the day of

and day of

then the above written obligation

to become void, otherwise to remain in full force.

Given under our common seal, this day of

one thousand eight hundred

1

## SCHEDULE (E.)

### *Form of Transfer of Mortgage or Bond.*

*A. B.* of in consideration of  
sum of paid to me by *G. H.* of

do hereby transfer to the said

*H.*, his executors, administrators, and assigns,

retain bond [*or mortgage*] number

by "The Company" to

bearing date the day of

for securing the sum of

interest [*or, if such transfer be by*

*assignment*, the within security], and all my right,

te, and interest in and to the money thereby

ured [*and if the transfer be of a mortgage*, and

and to the tolls, money, and property thereby

igned]. In witness whereof I have hereunto set

hand and seal, this day of

thousand eight hundred and

## SCHEDULE (F.)

*Form of Proxy.*

*A. B.* one of the prop  
 of "The Company," doth  
 appoint *C. D.* of to be the  
 of the said *A. B.*, in his absence to vote in hi  
 upon any matter relating to the undertakin  
 posed at the meeting of the proprietors of th  
 company to be held on the  
 day of next, in such ma  
 he the said *C. D.* doth think proper. In  
 whereof the said *A. B.* hath hereunto set hi  
 [*or, if a corporation, say the common seal*  
*corporation*], the day of  
 one thousand eight hundred and

---

## SCHEDULE (G.)

*Form of Conviction.*

to wit.  
 Be it remembered, That on the  
 day of in the year of ou  
*A. B.* is convicted be  
*C., D.*, two of her Majesty's justices of the  
 for the county of [*here*  
*the offence generally, and the time and plac*  
*and where committed*], contrary to the [*her*  
*the special act*]. Given under our hands and  
 the day and year first above written.

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## 8 VICT. CAP. 18.

*An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of lands for undertakings of a public nature.*

[8th May, 1845.]

WHEREAS it is expedient to comprise in one general sundry provisions usually introduced into acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for securing greater uniformity in the provisions themselves: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed, together therewith as forming one act.

Act to apply to all undertakings authorized by acts hereafter to be passed.

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:

Interpretations in this act:

“special  
act :”

“prescrib-  
ed :”

“the  
works :”

“Promo-  
ters of the  
under-  
taking.”

Interpreta-  
tions in this  
and the  
special act :

Number :

Gender :

“Lands :”

“Lease :”

“Month :”

“Superior  
Courts :”

II. The expression “the special act,” used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the act relates, and with which this act shall be so incorporated as aforesaid ; and the word “prescribed,” in this act in reference to any matter herein shall be construed to refer to such matter as shall be prescribed or provided for in the act, and the sentence in which such word shall be used shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special act,” had been used ; and the expression “the works,” or “the undertaking,” shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed, and the expression “the promoters of the undertaking” shall mean the parties, whether contractors, undertakers, commissioners, trustees, corporations or private persons, by the special act empowered to execute such works or undertaking.

III. The following words and expressions used in this and the special act, shall have the meanings hereby assigned to them, unless there is something either in the subject or context repugnant to such construction ; (that is to say)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :

Words importing the masculine gender only shall include females :

The word “lands” shall extend to messuages, lands, tenements, and hereditaments of whatever tenure :

The word “lease” shall include an agreement for a lease :

The word “month” shall mean calendar month :

The expression “superior Courts” shall mean the Courts of law :

Majesty's superior Courts of Record at Westminster or Dublin, as the case may require :

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath : "Oath :"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town : "County :"

The word "sheriff" shall include under sheriff, or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate : "the sheriff." "the clerk of the peace :"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justices shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place, where any part of such lands shall be situate, and who shall not be interested in such matter ; and "Justices :"

where any matter shall be authorized to be done by two justices, the expression "Two justices" shall be understood to mean two justices assembled and acting together.

"Two justices:"

Where under the provisions of this or any act, or any act incorporated therewith, notice shall be required to be given to the owner of any lands, or where any act shall be required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or persons who, under the provisions of this or any act, would be enabled to sell and dispose of the lands to the promoters of the undertaking.

"Owner:"

The expression "the bank" shall mean the bank of England where the same shall be required to be paid or deposited in lands situate in England, and shall mean the Bank of Ireland where the same shall be required to be paid or deposited in lands situate in Ireland.

"the Bank."

IV. And be it enacted, that in citing any other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "the Lands' Clauses Consolidation Act, 1845."

Short title of the act.

V. And whereas it may be convenient in some cases to incorporate with acts of Parliament some portion only of the provisions of this act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the provisions of this act with respect to the matter so proposed to be incorporated (describing such matter as it is contained in this act in the words introductory to the provisions of the act with respect to such matter), shall be incorporated with such act, and thereupon all the provisions of this act with respect to the matter so incorporated shall, save so far as they

Form in which portions of this act may be incorporated with other acts.

ied or excepted by such act, form part of and such act shall be construed as if the of such clauses and provisions were set in with reference to the matter to which all relate.

h respect to the purchase of lands by be it enacted as follows :

*Purchase  
of Lands  
by Agree-  
ment.*

ject to the provisions of this and the it shall be lawful for the promoters of the ; to agree with the owners of any lands ial act authorized to be taken, and which quired for the purposes of such act, and ties having any estate or interest in such / this or the special act enabled to sell the same, for the absolute purchase, for a n in money, of any such lands or such f as they shall think proper, and of all interest in such lands of what kind soever.

Power to  
purchase  
lands by  
agreement.

hall be lawful for all parties, being seised, f, or entitled to any such lands, or any interest therein, to sell and convey or re- me to the promoters of the undertaking, er into all necessary agreements for that and particularly it shall be lawful for all or following parties so seised, possessed, or aforesaid so to sell, convey, or release ; ay,) all corporations, tenants in tail or for l women seised in their own right or en- ver, guardians, committees of lunatics and trustees or feoffees in trust for charitable poses, executors and administrators, and or the time being entitled to the receipt and profits of any such lands in posses- ect to any estate in dower, or to any lease for lives and years, or for years, or any ; and the power to sell and convey or foresaid may lawfully be exercised by all s, other than married women entitled to

Parties  
under dis-  
ability en-  
abled to  
sell and  
convey.

dower, or lessees for life, or for lives and years, or for any less interest, not only for themselves and their respective heirs, administrators, and successors, but also on behalf of every person entitled in remainder, or expectancy after them, or of the estates of such parties, and as to women, whether they be of full age or were sole and of full age, and as to minors on behalf of their wards, and as to such persons on behalf of the lunatics and idiots of the committees respectively, and to the extent as such wives, wards, lunatics, and idiots respectively could have exercised the same authority of this or the special act respectively been under no disability, as trustees, executors, and administrators of their cestuique trusts, whether infant lunatics, femmes covert, or other persons, to the same extent as such cestuique trusts could have exercised the same powers and authority of this and the special act respectively been under no disability (a).

(a) Purchase from a person in an imbecile state. See the *Midland Counties Railway Company v. Jackson & Hills*, 3 Railway cases, 497.

Parties  
under disability to  
exercise  
other  
powers.

VIII. The power hereinafter given to purchase copyhold lands, as well as every other power to be exercised by the lord of any manor, shall be subject to the provisions of this or the special act respectively incorporated therewith, and the power to take any rent, charge, or incumbrance from any rent, charge, or incumbrance for the apportionment of any such rent, charge, or incumbrance, shall extend to and may be exercised by every party hereinbefore enabled to convey or release lands to the promoter taking.

Amount of  
compensation.

IX. The purchase money or compensation



for any lands to be purchased or taken from any person under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if the two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, on the application of either party, after notice to the other party, for that purpose nominate; and each of the two surveyors, if they agree, or if not then the surveyor nominated by the said justice, shall annex to the valuation a declaration in writing, subscribed by him or him, of the correctness thereof; and all purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned.

tion in case of parties under disability to be ascertained by valuation, and paid into the bank.

It shall be lawful for any person seised in fee simple and entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special act to sell and convey such lands, or any part thereof, unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, not as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage thereto, shall be in a gross sum.

Where vendor absolutely entitled, lands may be sold on chief rents.

The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise paid in such manner as shall be agreed between

Payment of rents to be charged on tolls.

the parties, and shall be paid by the promoters of the undertaking as such rents become payable. At any time any such rents be not paid more than ten days after they so become payable, and in default thereof in writing, the person to whom such rents shall be payable may either recover the same from the promoters of the undertaking, with costs of action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress on the goods and chattels of the promoters of the undertaking.

Power to purchase lands required for additional accommodation.

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions contained in the special act, would be enabled to sell and convey the lands so purchased to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Authority to sell and re-purchase such lands.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they have so acquired for extraordinary purposes, and to convey thereof, in such manner, and for such consideration, and to such persons, as the promoters of the undertaking may think fit, and again to purchase lands for the like purposes, and afterwards to sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes of the undertaking, shall not exceed the prescribed quantity.

Restraint on purchase from incapacitated persons.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase lands for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, and such promoters would not be able to sell and convey such lands except under the powers of this and the special act, and if the promoters of the undertaking shall purchase the said quantity of land from any party under

lity, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the commissioners of her Majesty's treasury of the Kingdom of Great Britain and Ireland or any of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company might exercise the powers of this or the special act empowered to purchase or take compulsorily.

Municipal corporations not to sell without the approbation of the Treasury.

Nothing with respect to the purchase and taking of land otherwise than by agreement, be it enacted as follows:—

*Purchase of Lands otherwise than by Agreement.*

Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed before any contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of the special act, or any act incorporated there-in, in relation to the compulsory taking of land for the purposes of the undertaking (a).

Capital to be subscribed before compulsory powers of purchase put in force.

Compulsory powers of taking lands must be expressly granted and will not be implied by construction. See note to the Railway Clauses Act.

Where an act containing a clause which enacted that in every case in which the said railway should cross any other railway, the communication shall, if the company and the promoters of such other railway do not agree about the same, be made in such manner as shall be directed by two engineers act-

ing as arbitrators ; and that the company shall make compensation (to be ascertained in the manner before pointed out) for any temporary, permanent, or recurring damages, to be caused by such crossing."

Powers had been given to the company to take land "not without the consent of the owner or occupier." It was held that the section first quoted did not confer the power of crossing another railway without the consent of the owner of it, although such crossing was absolutely necessary for the railway to the point specified in the act. *Clarence & Co. v. the Great North of England Railway Company*, 4 Q. B. 26; 3 Railway Cases, 426.

Where a company gives notice of its intention to take lands, according to the directions of this section, the relation between vendor and purchaser, as to the whole of the lands specified in the notice, is from that time established between the company and the parties to whom notice is given, and it is not competent for the company afterwards, in the event of an agreement being come to, to refer only a portion of such lands to arbitration. Lord Cottenham observes, that if this were allowed the great object and advantage of notices would be frustrated. A company might give notice of their intention to take a large tract of country, and afterwards fix on a small portion of it to which the attention of the owner could have been called, and respecting which he might not be furnished with proofs. *Stone v. Commercial Railway Company*, 4 Myl. & Cr. 122. See *infra*, p. 207.

In some cases, however, the duty of giving notice does lie upon the company. Where a proprietor of certain land premises not obviously affected by the railway, thinks it likely to be damaged by its proximity, it is his duty to give notice to the company that he will require compensation. *Walker v. London and Blackwall Railway Company*, 3 Q. B. 744; Law J. 1843; Q. B. 88; 3 Railway Cases, 396.

"To all persons interested," &c.

In the case of a tenancy from year to year it seems that, between landlord and tenant, the tenancy does not necessarily expire on the day specified in the notice to quit, but continues up to the latest day on which the tenant might, if he chose, remain upon the premises. Where a tenant from year to year paid his rent half-yearly, viz., on the 1st of April and 1st of October, and the Railway Company, pursuant to their act, gave him notice to quit at six months, which time expired on the 28th of July, it was held that he was liable for rent up to the 1st of October following, as for anything that appeared might have remained until then. Semble, that if he had been obliged to quit before, the rent must have been apportioned to the day on which he left. The tenant did not, but

have, claimed compensation from the company. 5 M. & W. 643.

As to whether or not it may be competent for a landowner to resist the compulsory purchase of his lands on the ground that the capital of the company has not been subscribed, and cannot probably be raised, see note to section 16 of the Railway Companies Consolidation Act. Section 17 seems to obviate the principal objection to a landowner possessing that power, viz., the inconvenience the company would be put to in proving the subscription of their capital in a court of justice.

XVII. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence of proof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

A certificate of two justices to be evidence that the capital has been subscribed.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act, or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required (a), and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice of intention to take lands.

(a) Every such notice shall state the particulars of the land so required, &c.] As to the sufficiency of a notice, see *Sims v. the Commercial Railway Company*, 1 Railway Cases, 431, where a notice to take part of a rope-walk, accompanied by a diagram of the entire rope-walk, indicating by coloured lines the manner in which the railway would intersect it, and the

portion required to be treated for, but *having no scale of measurement appended* was held sufficient ; see form of *noti-  
denda*.

Service of  
notices on  
owners and  
occupiers  
of lands.

XIX. All notices required to be served **b**  
promoters of the undertaking upon the parties  
rested in or entitled to sell any such lands shall **I**  
be served personally on such parties or left **at**  
last usual place of abode, if any such can after  
gent inquiry be found, and in case any such **p**  
shall be absent from the united kingdom, or **c**  
be found after diligent inquiry, shall also be left **in**  
the occupier of such lands, or, if there be no **m**  
occupier, shall be affixed upon some conspicuous **p**  
of such lands.

Service of  
notice on a  
corporation  
aggregate.

XX. If any such party be a corporation aggregate  
such notice shall be left at the principal office  
business of such corporation, or if no such office  
after diligent inquiry be found, shall be served  
some principal member, if any, of such corporation  
and such notice shall also be left with the occupier  
such lands, or, if there be no such occupier, shall  
affixed upon some conspicuous part of such lands.

If parties  
fail to treat,  
or in case  
of dispute,  
question to  
be settled  
as after  
mentioned.

XXI. If, for twenty-one days after the service  
such notice, any such party shall fail to state  
particulars of his claim in respect of any such **l**  
or to treat with the promoters of the undertaking  
respect thereof, or if such party and the promoters  
the undertaking shall not agree as to the amount  
the compensation to be paid by the promoters of  
undertaking for the interest in such lands belong  
to such party, or which he is by this or the spec  
act enabled to sell, or for any damage that may  
sustained by him by reason of the execution of  
works, the amount of such compensation shall  
settled in the manner hereinafter provided for sett  
cases of disputed compensation (a).

(a) The act incorporating the Hungerford Market Comp  
after directing that the company should give notice of

no person to take lands, &c.; in a clause similar to this, directed that if any person interested in such premises, should for twenty-one days next after notice given him of their being required for the purposes of the act, refuse to treat, or not agree for the sale thereof, in every such case the company should estimate the value of, and recompence to be made for, such premises to be inquired of by a jury, &c., it was held, that the company having given notice to an occupier could not withdraw from it though they offered to pay all reasonable costs incurred by him in consequence; but that the act obliged them on his refusal to issue their warrant for summoning a jury. And the court granted a mandamus to compel them to do so. Mr. Parke said,—"The company are not bound to purchase property mentioned in the schedule, but the question is, at what time they shall be said to have exercised their option. Now, I think that this is done when they have given notice, and that according to reason and good sense, such notice ought to be as binding on them as on the owner or occupier." He referred to the case of *The King v. The Commissioners for Improving the Market House, Manchester*, (reported in note, p. 333, 4 B. & C. 204.) where the same point was decided. See *Doo v. The London and Croydon Railway Company*, 1 Railway Cases, 257, and *Stee v. The Commercial Railway Company*, 4 Myl. & C. 12.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

notice the nature of the interest in respect of such party claims compensation, and the amount of the compensation so claimed, the same shall be settled accordingly; but unless the party claiming compensation shall as aforesaid signify his intention to have the question of such compensation referred to arbitration, or if when the matter shall be referred to arbitration the arbitrators or umpire shall for three months have failed to make his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

(a) The most novel and probably useful provisions in the acts, are those which encourage the settling of disputes by arbitration.

Method of proceeding for settling disputes as to compensation by justices.

XXIV. It shall be lawful for any justice of the peace, upon application of either party with respect to the question of disputed compensation by this or any special act, or any act incorporated therewith, to be settled by two justices, to summon the parties to appear before two justices, at a time and place to be named in the summons, and upon the failure of any of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine the question, and for that purpose to examine the witnesses of both parties or any of them, and their witnesses, and the costs of every such inquiry shall be determined to the discretion of such justices, and they may award costs in the amount thereof.

Appointment of arbitrator when questions are to be determined by arbitration.

XXV. When any question of disputed compensation shall be referred to arbitration by this or the special act, or any act incorporated therewith, authorized or required to be referred to arbitration, shall have arisen, then, if the parties shall concur in the appointment of an arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, and the person whom such dispute shall be referred to;



Appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party dies, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *parte*; and every arbitrator so to be substituted aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of  
arbitrator  
to be sup-  
plied.

Appoint-  
ment of  
umpire.

XXVII. Where more than one arbitrator have been appointed, such arbitrators shall enter upon the matters referred to them and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to them under the provisions of this or the special act, and if such umpire shall die, or become incapable to act, the arbitrators shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of  
Trade em-  
powered to  
appoint an  
umpire on  
neglect of  
the arbitra-  
tors, in case  
of railway  
companies.

XXVIII. If in either of the cases aforesaid said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company is a party to the arbitration, and two justices of the peace, in any other case, shall on the application of either party to the arbitration, appoint an umpire, and the decision of such umpire on the matters on which they shall differ, or which shall be referred to him under this or the special act, shall be final.

In case of  
death of  
single arbi-  
trator the  
matter to  
begin *de  
novo*.

XXIX. If when a single arbitrator has been appointed, such arbitrator shall die, or become incapable to act before he shall have made a decision on the matters referred to him, the arbitration shall be deemed to be discontinued, and the matter shall be referred to arbitration under the provisions of this act in the same manner as if such arbitrator had not been appointed.

If either  
arbitrator  
refuse to act  
the other to  
proceed *ex  
parte*.

XXX. If, where more than one arbitrator have been appointed, either of the arbitrators shall refuse to act, or for seven days neglect to act, the other may proceed *ex parte*, and the decision of the arbitrator so proceeding shall be as effectual as if he had been a single arbitrator appointed by both parties.

XXXI. If where more than one arbitrator shall have been appointed, and where neither of them refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any,) as shall have been appointed for that purpose by both such arbitrators in their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

XXXII. The said arbitrators or their umpire may for the production of any documents in the possession or power of either party which they or may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose,

Power of arbitrators to call for books, &c.

XXXIII. Before any arbitrator or umpire shall bring into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to

Arbitrator or umpire to make a declaration.

[*A. B.* do solemnly and sincerely declare, that I faithfully and honestly, and to the best of my power and ability, hear and determine the matters referred to me under the provisions of the act intituled *the special act*].

*A. B.*

made and subscribed in the presence of .”

such declaration shall be annexed to the award made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary to the same he shall be guilty of a misdemeanor.

XXXIV. All the costs of any such arbitration, and the amount thereof, to be settled by the arbitrators, shall

Costs of arbitration how to be borne.

be borne by the promoters of the undertaking, unless the arbitrators shall award the sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the promoters in equal proportions.

Award to be delivered to the promoters of the undertaking.

XXXV. The arbitrators shall deliver in writing to the promoters of the undertaking the award made by them, and the said promoters shall retain the same forthwith, on demand, at their own expense, and shall at all times, on demand, produce a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the award, and allow the same to be inspected and examined by such party or any person appointed by the Court for that purpose.

Submission may be made a rule of Court.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior Courts, and the application of either of the parties.

Award not void through error in form.

XXXVII. No award made with respect to any question referred to arbitration under this or the special act shall be set aside on account of any irregularity or error in matter of form.

Promoters of the undertaking to give notice before summoning a jury.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause a jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in the undertaking sought to be purchased by them from the promoters, and for the damage to be sustained by the promoters by the execution of the works.

Warrant for summoning a jury.

XXXIX. In every case in which any question of disputed compensation shall be referred to a jury, the promoters of the undertaking shall be bound to produce to the jury a copy of the award made by the arbitrators, and shall be bound to produce the award, and allow the same to be inspected and examined by such party or any person appointed by the Court for that purpose.

determined by the verdict of a jury the promoters of the undertaking shall issue their warrant addressed to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the matter in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner of such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-corer shall have power, if he think fit, to appoint a deputy or successor (a).

(a) If however the company neglect to summon a jury, the company claiming compensation has no power to do so, unless such power be expressly given by the special act; in that case his remedy, if the company have not exceeded their power, is to apply to the Court of Queen's Bench for a mandamus to compel them to issue their warrant for summoning a jury. See *Att. Gen. v. London and Blackwall Railway Company*, 3 Q. B. 396; 3 Railway Cases, 396. Now, however, see *sec. infra*, 68. A mandamus, however, has not been granted, unless application has been made to the company to summon a jury, and they have refused, or at least, have delayed such an unreasonable time, or so acted that the Court would imply a refusal. In the case of *Rex v. The Brecknock and Abergavenny Canal Company*, (3 A. & E. 222), Lord Denman lays down the general rule as to the circumstances under which writs of mandamus are granted. "We cannot grant a mandamus unless there has been a direct refusal, and here, I think there has not. It is indeed necessary that the word 'refuse,' or any equivalent should be used; but there should be enough to shew that the party withholds compliance, and distinctly determines not to do what is required." See *Reg. v. Wilts and Berks Rail-*

*way Company*, 3 A. & E. 477; 5 N. & M. 623. *Reg. v. Thames and Isis Navigation Co* & Ell. 901. See however, sec. 68 and note.

The warrant must correspond with the previous

Where a company had issued their warrant to summoning a jury, to assess the value of certain land they had described by feet and inches, and by plan, not corresponding with that in their previous description and reference in the precept excluded comprised in the plan sent with and referred to and comprising a portion not contained in it; obtained an injunction to restrain the company from upon the precept. Lord Cottenham said—"The company had given the notice, the relative situation and purchasers is constituted between the parties and the value of the property. The parties not having an agreement, the company resort to that power which gives them of bringing the case before a jury; and which they adopt, is to abandon a large part of the land included in their notice, and to include in the precept a part of it which was not included in the notice.

It then has the notice to that upon which the company is to take the opinion of the jury? It is admitted that a part of the land which was not included in their notice is not to proceed before the jury. If I were to hold that to exclude from the consideration of the jury, part of the land which was comprised in the notice, it would be in the power of the company, after having given notice to take a particular part of that property into as many subjects of the jury as they might think fit, this power is given by the terms of the act of Parliament, and is also extreme in its operation to all persons with whom the company might deal. The proceedings before the jury must be consistent with the precept with the notice." *Stone v. The Comm. Co. v. The Railway Company*, 4 Myl. & Cr. 122; 1 Railway Cases. The requisites of a precept, and where a precept is an inquisition, see *Taylor v. Clemson*, 3 Railway Cases. The sheriff should be an interested party, appears to be waived the objection. *Corrigal v. London & North Western Railway Company*, 5 Man. & Gr. 219; 3 Railway Cases. *Quære*, whether a warrant to the sheriff of Middlesex consisting of two persons, would be bad if one was a shareholder? *ib.* Semble, that an inquisition is valid in the absence of a landowner, before an interested shareholder is quashed notwithstanding, sec. 145.

Provisions  
applicable

XL. Throughout the enactments contained in this act relating to the reference to a jury

"sheriff" is used, the provisions applicable to sheriff to shall be held to apply to every coroner or apply to coroner. person lawfully acting in his place; and in case in which any such warrant shall have directed to any other person than the sheriff, sheriff shall, immediately on receiving notice of delivery of the warrant, deliver over, on application for that purpose, to the person to whom same shall have been directed, or to any person named by him to receive the same, the jurors and special jurors list belonging to the county and the lands in question shall be situate.

d. Upon the receipt of such warrant the sheriff Jury to be summon a jury of twenty-four indifferent per- summoned. sons duly qualified to act as common jurymen in superior courts, to meet at a convenient time and to be appointed by him for that purpose, such not being less than fourteen nor more than twenty-one days after the receipt of such warrant, each place not being more than eight miles distant from the lands in question, unless by consent of parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

I. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn Jury to be impan- sheriff, in such manner as juries for trials of nelled. are joined in the superior courts are by law required to be drawn, and if a sufficient number of persons do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others who may speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may make their lawful challenges against any of the jury- but no such party shall challenge the array.

II. The sheriff shall preside on the said in- Sheriff to preside:

witnesses to  
be sum-

qu岸, and the party claiming compensation shall be deemed the plaintiff, and shall have all the rights and privileges as the plaintiff is entitled to in the trial of actions at law ; and if either party shall be sworn in writing, the sheriff shall summon to the trial any person considered necessary to be examined as a witness touching the matters in question. And upon the like request the sheriff shall order to be sworn any six or more of them, to view the place in controversy, in like manner as viewed by a jury in the trial of actions in the superior courts.

Penalty on  
sheriff and  
jury for  
default.

XLIV. If the sheriff make default in performing the matters herein-before required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence. The penalty shall be recoverable by the party aggrieved by the undertaking by action in any of the superior courts. And if any person summoned and returned for a jury under this or the special act, whether by a general or special summons, do not appear, or if appeared and refused to make oath, or in any other manner neglect his duty, he shall, unless he shall satisfy the sheriff by excuse to the satisfaction of the sheriff of the costs not exceeding ten pounds, and every such person shall be payable by a sheriff or juryman shall be liable to satisfaction of the costs of the inquiry in which the same will extend ; and, in addition to the penalties hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an action joined in any of the superior courts.

Penalty on  
witnesses  
making de-  
fault.

XLV. If any person duly summoned to give evidence upon any such inquiry, and who has tendered of his reasonable expenses shall neglect to appear at the time and place appointed in the summons without sufficient cause, or if any person, whether summoned or not, who is sworn as a witness refused to be examined on





powers of this or the special act, or any act incorporated therewith (a).

(a) This clause, as far as it relates to the assessment of sums for the value of lands, and the damage done to them, been held to be directory only, and not in the nature of a condition, such as to avoid the verdict if not complied with, at least on the ground of mis-direction, if the point has not been taken at the trial; *Corrigal v. London and Blackwall Railway Company*, ante. If, however, the sum assessed should not be apportioned between or among the plaintiffs if there be more than one, *semble*, that the inquisition would be quashed notwithstanding section 145, and a mandamus issued to the company to take steps for a new trial. *Rex v. Trustees of Norwich and Watton Road*, 5 A. & E. 563; *ex parte*, *Kilgobbin*, N. & M. 458.

Verdict  
and judgment to be  
recorded.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and be so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded, and such verdicts and judgments shall be deemed good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments and may have copies thereof or extracts therefrom on paying for each inspection thereof one shilling and for every one hundred words copied or extracted therefrom sixpence; which copies or extracts the clerk of the peace is hereby required to make and to sign and certify the same to be true copies (a).

(a) It was for some time doubtful whether any remedy existed on "verdicts and judgments" made records of quarter sessions other than indictment, the sessions having no power of levying or in any way enforcing their judgments. On the ground that indictment might not be an adequate remedy, and that, whether debt would lie on a record of quarter sessions was doubtful, a mandamus was in one case granted, compelling a Railway Company to pay the amount of damages assessed.

*Y. Rex v. The Nottingham Old Water Works Company*, 11 Q. B. & P. 480. The case, however, of *Corrigal v. The London and Blackwall Railway Company*, 5 Man. & Gr. 219; 11 Q. B. 241, 3 Railway Cases, 411; having decided that the debt will lie on such record, it is presumed that a mandamus would not again be granted under such circumstances.

The verdict and the judgment" directed here to be signed by the sheriff, and deemed a record, &c., is called the "inquisition" and should set out all the material circumstances necessary to confer jurisdiction on the sheriff and jury.

It should shew that notice has been given to the owners of the lands, and it seems the proper course is to set out this notice in the finding of the jury, but in the form of a caption.

*Mayor, Bailiffs, &c. of Bristol*, 4 Burr. 2244. *Rex v. Mayor*, 7 T. R. 363; *Rex v. Trustees of the Norwich and Norwich Road*, 5 A. & E. 563; see judgment of Patteson, J. If there be two or more plaintiffs claiming compensation under the same interests, the verdict as set out in the inquisition must apportion the compensation to each. *Rex v. The Trustees of Norwich and Watton Road*, 5 A. & E. 563.

The inquisition should shew that the verdict was consistent with the warrant to the sheriff and the warrant with the notice, and that in all points on which the words of the statute are compulsory and not merely directory. See Lord Cottenham, *Stone Commercial Railway Company*, 4 Myl. & Cr. 122. *Corrigal v. London and Blackwall Railway Company*, ante.

The same strictness, however, will not be required in drawing up the record, which applies to the records of inferior courts in which, in which it is requisite that every circumstance necessary to the jurisdiction should be clearly stated; but the court will endeavour to discover jurisdiction (i.e. that the conditions of the statute have been complied with) on the face of the proceedings, if it can be done by any reasonable intendment.

*Trustees of Swansea Harbour*, 8 A. & E. 439. *Corrigal v. London and Blackwall Railway Company*. For example, it is necessary to state that all the capital has been paid up, when the act makes this a condition precedent to the exercise of its compulsory powers. *Doe dem. Payne v. Bristol and Peter Railway*, 6 M. & W. 320.

It is also necessary to state that the lands in question were specified in the recital of the act or certified by justices to have been omitted to be taken. *Reg. v. Manchester and Leeds Railway Company*, 11 Q. B. 413.

The inquisition was drawn up as follows—"Lancashire to wit, the inquisition, verdict and judgment had, taken, and given at the assizes before me" T. B. C. "sheriff," &c. pursuant to an act, &c. by the oaths of," &c. (naming the jurymen) "here duly empanelled, &c. by the said sheriff of," &c. in pursuance of and in obedience to a warrant made and issued under," &c. (the com-

pany's seal) 'to me directed and delivered nexed; who, being sworn and charged as, i warrant directed, upon their oaths present, i have inquired of, found and assessed, and do give this their verdict for the sum of,' &c. company 'for the purchase of, &c., (the tion) all and singular which said premises a particularized,' and are by the said act of Par to be taken by 'the company for the purpo mentioned — whereupon, I, the said sheriff, i said act — do pronounce and give judgment money so assessed,' &c. 'according to the di act.'" It was held that on the warrant and in it was to be intended that no agreement coul the parties, and therefore jurisdiction appear the proceedings.

By another section, the company could no set apart and used, before a day named, for i if not specified in the schedule to the act, u proceeded from mistake, and should be so c before provided for in cases of unintentional e reference; another section provided, that erroneously described in the book of referenc case of a dispute about the same, might certify description proceeded from mistake. The s instances, specified house, garden and yard description of a single property. The land tained a house, and land in the same curtila, used as a yard and garden before the day nam gave the owner notice that they should apply to omissions in the schedule, relating to a garden; the justices certified for a house, rec so on proof adduced. On the trial of the s brought for use and occupation) and the def rightful eviction of defendants by a Railway ( local act, 6 & 7 W. 4, c. 111; the jury found yard and garden were parcel of and included of the house in the certificate, but left to t they ought to have been separately specified.

It was held, 1st, that it was not necessary t should mention the certificate; 2nd, that the and the application for it shewed jurisdiction averring a dispute; 3rd, that upon the fin it must be taken that the certificate suffice yard and garden. *Taylor v. Clemson*, 2 Q. 1842; Exch. Ch. 447.

The above cases have been cited for the p how an inquisition ought to be drawn up. Cl tainly prevent such inquisitions being removal

regular cases) by *certiorari*. It will not, however, make a bad inquisition a good title to lands, or defence to an action by the owner of them, or a good ground for maintaining an action to recover the compensation money.

The effect of section 145 will be illustrated by the following case:

A Railway Company issued their warrant to the sheriff of a county, requiring him to summon a jury to assess damages under the compensation clause of their act. The sheriff summoned a jury accordingly. At the inquisition, neither sheriff nor under-sheriff presided, but a clerk of the latter assisted by a barrister as assessor. Both the assessor and the clerk had been appointed by the sheriff his deputies for this purpose. The sheriff returned the verdict and judgment, (purporting to have been taken and delivered by himself), to the clerk of the peace, (sec. 50), to be deposited among the records of quarter sessions. The act provided, that no proceeding in pursuance of the act should be removeable by *certiorari*. It was held, that these proceedings having been correctly originated by warrant to the sheriff, were in pursuance of the act, and therefore removeable by *certiorari*. *Reg. v. The Sheffield, Ashton-Lyne, and Manchester Railway Company*, 1 Railway Cas. 537.

By a railway act it was provided that where an agreement for compensation for damages incurred in execution of the act had not been made, the company should issue a warrant to the sheriff to summon a jury, who should on oath inquire of, assess, and give a verdict for the sum of money to be paid by way of compensation for the damages. No form of warrant was given by the act. The act contained the usual clauses for setting away a *certiorari*. The company issued a warrant to the sheriff to summon a jury for the purpose of assessing the sum of money (if any) to be paid to J. C. by way of compensation.

They found he had not sustained any damage. The court set aside a *certiorari* as the warrant (though it ought not to have contained the words "if any,") gave jurisdiction and made the inquisition a proceeding in pursuance of the act. Semble, the court might on such an inquiry find that the party had sustained damage. *Reg. v. The Lancaster and Preston Railway Company*, 14 L. J., N. S., Q. B. 84.

A railway act directed that compensation for lands taken by a company, in certain cases, should be assessed by a special jury, that the deviations from the line of railway mentioned in the act should not exceed a specified distance, and that no proceedings taken in pursuance of the act should be removed by *certiorari*. A *certiorari* was applied for to remove an inquisition on affidavits that the jury appeared, by the inquisition, not to be a special jury, though the case was one on which a special jury was requisite; and that there had been a deviation greater than

the act allowed. The writ was refused; because proceedings were in pursuance of the act, the *certiorari* was taken away, and if not in pursuance of the act, they were not. *Reg. v. The Bristol and Exeter Railway Company*, 202. This case seemed to make the law quite clear: the act took away the *certiorari*: some doubt, however, was thrown upon it by a subsequent one, from which it can be collected, it is this: that where the act takes away the *certiorari* with respect to all proceedings in pursuance of the act, the Court has still the power of *certiorari* in proceedings not in pursuance of the act; that where the proceedings are manifestly irregular, that no action could be maintained upon them, or where, on the other hand, the irregularity is trifling, the Court will not exercise their power in some possible intermediate cases, where the irregularity is not trifling, and at the same time as to be an obvious and easy defence to an action, might, perhaps, interfere. *Reg. v. The Sheffield, Lyne, and Manchester Railway Company*, 11.

Where the *certiorari* is taken away, the Court interferes indirectly by granting a mandamus to the sheriff to issue a new precept to the sheriff.

A Railway Act directed, that in certain cases the company should issue a precept to the sheriff to summon a jury to assess damages, and that the verdict and judgment should be "final and conclusive." One Finch brought an action against the company for loss he had suffered from the railway having passed over a portion of his farm, and also from the railway having been made across one of his fields to the detriment of the carts used by the workmen of the Railway Company having passed over his land. The company issued a precept, by which the sheriff was ordered to summon a jury to assess the damages to be paid to Finch for the loss he should have been, before that time, done to him in and about the lands now and formerly in his possession by reason of the execution of any of the works authorized at, upon, or near the said lands, and the temporary, or perpetual occupation of the same, and the summing and assessing damages to be done to or sustained by him. It appeared from the affidavits that the under-lying facts were as follows: that the jury included from the jury the question as to the damages to be done to the carts, considering that it was not a subject for the jury to consider; and it appeared also that the jury assessed the damages greatly under what was proved in the defendant's own witnesses. Coleridge, J. said that the jury sat under a precept which embraced a dispute. The verdict is said to be grossly under the plaintiff seeks for this rule on two grounds: first, that the sheriff excluded one ground of damages, which

to the jury ; 2ndly, that the defendant's witness that a greater amount of damages had been suggested by the jury gave their verdict for. It is admitted, that for a new trial could not succeed, because the act makes the verdict of the jury final and it was said that this Court might direct a second trial, but it would be doing indirectly what this Court cannot do. The reply to it would either be, what you order has been already done, or if a second trial is ordered, it would come round to the same thing as if the jury had given a verdict for a sum which would be an evasion of the statute." *Reg. v. Great Northern Railway Company*, L. J. 1843 ; Q. B. 271. See also *ibid.*, 466. Where the inquiry has not been held at quarter sessions, as directed, parol evidence is not admissible to impeach the finding of the jury. *Manning, v. Great Northern Railway Company*, 12 M. & W, 237.

Every such inquiry before a jury, where the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking, but if the verdict of the jury be given for a less sum than the sum previously offered by the promoters of the undertaking, or if the lands shall have failed to appear at the place appointed for the inquiry, and after due notice thereof, one-half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the judgment thereon, in case such verdict shall be for a greater sum than was offered by the promoters, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, except the costs of the inquiry (a).

Costs of the inquiry how to be borne.

The costs of such inquiry" will clearly include the costs of the trial as in ordinary actions at law. The surveyors who are called as witnesses, will be treated as witnesses, though not *qua* surveyors, for preparing the inquiry. See *Ex v. Justices of the City of York*, 1 A. & E. 828. See also *Ex v. Justices of Warwickshire*, 2 Railway Cases, 661. It may be stated, that where an act directed, that in case the jury should give a greater sum than was offered by the promoters, the costs of summoning the jury and expenses of

witnesses', were to be defrayed by the company ; but if the jury should give the same or a less sum than had been offered, a moiety of the said costs and expenses was to be defrayed by the party to whom the lands belonged ; and a subsequent act was enacted, that the party with whom the company should have a dispute, should enter into a bond to pay his " proportion of the costs and expenses of summoning and returning such jury, and of taking such verdict, and of the summoning and attendance of witnesses," in case any part of the costs should fall upon him. It was held, that the words " the costs of taking such verdict" did not mean the costs of the trial, and that the fees of counsel and the costs of the attorney respecting the preparing for and attendance at the trial, were properly disallowed. *Gardner*, 1 Nev. & P. 308.

Even where an act declared, " that the party claiming compensation, should be plaintiff, and have all such rights and privileges as plaintiffs in actions at law are entitled to," a subsequent section enacted, " that in every case in which a verdict of the jury shall be given for the same or a greater sum than shall have been previously offered by the company, the costs of summoning such jury, and the expenses of witnesses shall be defrayed by the said company ; if for a lower sum, a moiety by each of the parties," and subsequently required from a party summoning a jury to pay his proportion " of the costs and expenses of summoning, returning such jury, and taking such verdict, and the summoning and attendance of witnesses, any part of such costs and expenses shall fall upon them." In a case where no offer had been made by the company, but the claimant had been summoned and assessed compensation to the extent of the offer, it was held, that the claimant was not entitled to the costs of the attorney's letters and attendances, nor to the expenses of plans, &c., paid to the surveyors not called as witnesses. *v. Sheriff of Warwickshire*, 2 Railway Cases, 661. See also *costs of a mandamus to sheriff to execute inquiry. Sheriff of Middlesex*, 13 L. J., N. S., Q. B. 14.

Particulars  
of the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, and in taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise in connection with such inquiry.



LIII. If any costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the land or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Payment of costs.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the time and place so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to

Special jury to be summoned at the request of either party.

be nominated or struck by the proper superior courts, and the sheriff shall a not later than the eighth day after st jury, for the parties or their agents to him to reduce the number of such jur shall give four days' notice to the p the day so appointed the sheriff shall duce the said special jury to the num in the manner used and accustomed officers of the superior courts.

Deficiency  
of special  
jurymen.

LV. The special jury on such inquit of twelve of the said twenty who shall the names being called over, the partie lawful challenges against any of the and if a full jury do not appear, or if a lenges a full jury do not remain, t application of either party, the sheriff : list of such jury the names of any oth persons qualified to act as special or men, who shall not have been previc the aforesaid list, and who may then b Court, or can speedily be procured, so such jury, all parties having their lav against such persons ; and the sherit to the trial and adjudication of the m tion by such jury, and such trial shall all respects with the like incidents and and the like penalties shall be applica before provided in the case of a tri jury.

Other in-  
quiries  
before same  
special jury  
by consent.

LVI. Any other inquiry than that : which such special jury may have b reduced as aforesaid may be tried by vided the parties thereto respectively : consent to such trial.

Jurymen  
not to at-

LVII. No jurymen shall, without

summoned or required to attend any such proceeding tend more  
as aforesaid more than once in any year. than once a  
year.

LVIII. The purchase money or compensation to Compensation to ab-  
be paid for any lands to be purchased or taken by sent parties  
the promoters of the undertaking from any party to be de-  
who by reason of absence from the kingdom, is pre- termined  
vented from treating, or who cannot after diligent by a sur-  
inquiry be found, or who shall not appear at the time veyor ap-  
appointed for the inquiry before the jury as herein- pointed by  
before provided for, after due notice thereof, and the two jus-  
compensation to be paid for any permanent injury to tices.  
such lands, shall be such as shall be determined by  
a valuation of such able practical surveyor as two  
justices shall nominate for that purpose as hereinafter  
mentioned.

LIX. Upon application by the promoters of the Two jus-  
undertaking to two justices, and upon such proof as tices to  
shall be satisfactory to them that any such party is, nominate a  
reason of absence from the kingdom, prevented surveyor.  
from treating, or cannot after diligent inquiry be found,  
that any such party had failed to appear on such  
inquiry before a jury as aforesaid, after due notice to  
for that purpose, such justices shall, by writing  
under their hands, nominate an able practical sur-  
veyor for determining such compensation as afore-  
said, and such surveyor shall determine the same  
accordingly, and shall annex to his valuation a decla-  
ration in writing subscribed by him of the correctness  
thereof.

X. Before such surveyor shall enter upon the Declara-  
tion of such valuation as aforesaid he shall, in the tion to be  
presence of such justices, or one of them, make and made by  
subscribe the declaration following at the foot of such the sur-  
surveyor.  
declaration ; (that is to say,) a.

'I A. B. do solemnly and sincerely declare, that'  
I will faithfully, impartially, and honestly, according

to the best of my skill and ability, execute and make the valuation hereby referred to

“ Made and subscribed in the presence of

And if any surveyor shall corruptly make a declaration, or having made such declaration wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation,  
&c. to be  
produced  
to the  
owner of  
the lands  
on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by the surveyor, and shall be preserved together with the documents of the promoters of the undertaking, and at all times produce the said valuation and documents, on demand, to the owner of the lands comprised in such valuation, and to all other persons interested therein.

Expenses  
to be borne  
by promoters.

LXII. All the expenses of and incidental to such valuation shall be borne by the promoters of the undertaking.

Purchase  
money and  
compensation,  
how to  
be estimated.

LXIII. In estimating the purchase money and compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, in any case may be, not only to the value of the lands purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the taking of the lands taken from the other lands of the owner, or otherwise injuriously affecting the lands by the exercise of the powers of the special act, or any act incorporated therewith.

Where  
compensation  
to absent party  
has been

LXIV. When the compensation payable for the taking of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, the same shall be deposited in the Bank under the provisions of the special act, or any act incorporated therewith.

by reason that the owner or party entitled by such lands or such interest therein as could not be found or was absent from the if such owner or party shall be dissatisfied valuation it shall be lawful for him, before have applied to the Court of Chancery for or investment of the monies so deposited provisions herein contained, by notice in the promoters of the undertaking, to the question of such compensation to be submitted to arbitration, and thereupon the same shall be submitted accordingly, in the same manner as cases of disputed compensation hereinbefore or required to be submitted to arbitration.

determined by a surveyor, the party may have the same submitted to arbitration.

The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or what further sum ought to be paid by them.

Question to be submitted to the arbitrators.

If the arbitrators shall award that a further sum to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the arbitrators shall require, such further sum within fourteen days after the making of such award, or in default of which the same may be enforced by attachment, or with costs by action or suit in any of the courts.

If further sum awarded, promoters to pay or deposit same within 14 days.

If the arbitrators shall determine that the sum deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, and if the arbitrators shall determine that a further sum to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Costs of the arbitration.

To be settled by arbitration or jury, at the option of the party claiming compensation.

LXVIII. If any party shall be entitled to compensation in respect of any lands, interest therein, which shall have been injuriously affected by the execution of the act, and for which the promoters of the undertaking have not made satisfaction under the provisions of this or the special act, or any act incorporated with, and if the compensation claimed in respect of such lands shall exceed the sum of fifty pounds, such party shall have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if the party desire to have the same settled by jury, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such claim, stating in such notice the nature of the claim, the value of such lands in respect of which he claims compensation, and the amount of the compensation therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner provided; or if the party so entitled desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of such notice, the same shall be settled by jury for settling the same in the manner provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same to be recovered by him, with costs, by action in the superior courts (b).

(a) *Taken for or injuriously affected, &c.*]

statutes requiring a company to take steps to assess the amount of damage done to certain lands, stated that the railway passed through the parish where the estate was situate, at that point was completed; that the estate did not form part of the lands which the company were empowered to take; that the company had not entered upon, taken, appropriated, or used the land: and that the complaining party was not interested in any land on which the railway or works were constructed, and which the company had entered upon, touched, used, or in any manner interfered with for the purposes of the act. It was held, that compensation was not limited by reference to the cases negatived in the return, but might be claimed for injury done, without entering upon or taking the land, viz., by lowering a road on which the land abutted. *Rex v. Eastern Counties Railway Company*, 2 Q. B. 347. To raise the level of a brook into which a drain used to empty itself, whereby a flood is occasioned, (*Regina v. North Midland Railway Company*, 2 Railway Cases, 1; or to cause an inundation or seepage by any operations, (*Regina v. North Union Railway Company*, 1 Railway Cases, 729), will be the subject of compensation under this, if not under any other clauses.

Future or contingent damages do not seem the subject of compensation, unless they be specially mentioned in the act. It has been held, that a party entitled to an easement over land purchased by a company, should not prefer his claim to compensation until some actual damage is done to it. *Thickett v. The Lancaster Canal Company*, 4 M. & W. 472. Railway Acts have very commonly contained provisions relative to future, perpetual, temporary, or recurring damages." As the effect of such provisions, see *Rex v. Justices of the West Riding of Yorkshire*, 1 A. & E. 563, where the jury found a verdict of 2,800*l.* damages, on the assumption that the company would so use land they had purchased as to destroy a mill-race.

It will not be enough to establish, that the situation of premises is injuriously affected for business; as for instance, that a public-house is less easy of access through the blocking up of thoroughfares through which customers used to resort. *Rex v. London Dock Company*, 5 A. & E. 163. Nor that by reason of a railway the working of a mine becomes more expensive. *Rex v. Leeds and Selby Railway Company*, 3 A. & E. 683. In this latter inconvenience, compensation is expressly given by the Railway Clauses Act, section 81.

1) *They shall be liable to pay the amount of the compensation so claimed, &c.*] This is an important provision. Formerly, in the event of a company neglecting to summon a jury to assess the value of land which they had taken, there was no remedy against them, except by applying to the Court of Queen's Bench for a mandamus compelling them to summon a

jury, it having been held, that they were not liable in at law for taking or injuring land in pursuance of. According to this section, however, the whole of the money claimed with costs, is recoverable by action plaintiff establishing that he is entitled to some compensation and the notice, and failure, to summon a jury. This is sufficient a remedy, as to supersede the necessity of a writ being again granted, and consequently to take away to it.

A Court of Equity will restrain a company from entering lands, until the purchase or compensation money agreed or awarded has been paid. *Robertson v. The Great Eastern Railway Company*, 1 Railway Cases, 459. *Jones v. Western Railway Company*, 1 Railway Cases, 684. An agreement, however, with a landowner, for the purchase of land, does not necessarily bind the company to pay the purchase money to him, unless they have formally accepted his title. In such case, on tender of conveyance, an action will lie against the company, but the Court will refuse an application for an injunction restraining them from entering on their depositing the money. (See the subsequent sections,) *Hyde v. Western Railway Company*, 1 Railway Cases, 277.

Even where a Railway Act had recognised the title of a plaintiff, by a description of lands "belonging to John Penny, Esq.," this was held not to preclude the company from disputing his title.

#### *Application of Compensation.*

And with respect to the purchase-money or compensation coming to parties having limited interest, or prevented from treating, or not making use of the land, enacted as follows :—

Purchase money payable to parties under disability amounting to 200*l.* to be deposited in the Bank.

LXIX. If the purchase-money or compensation which shall be payable in respect of any land or interest therein, purchased or taken by the company, or of the undertaking from any corporation, or from any person, or in life, or in tail, married woman seized in right, or entitled to dower, guardian, committee of a lunatic or idiot, trustee, executor, or administrator, or any person having a partial or qualified interest in such lands, and not entitled to sell or convey the same, except under the provisions of this special act, or the compensation to be paid in respect of permanent damage to any such lands, amounting to or exceed the sum of two hundred pounds the same shall be paid into the Bank.



paid into the Bank, in the name and with the  
 of the Accountant-general of the Court of  
 Chancery in England if the same relate to lands in  
 England or Wales, or the Accountant-general of the  
 Court of Exchequer in Ireland if the same relate to  
 lands in Ireland, to be placed to the account there of  
 the Accountant-general *ex parte* the promoters of  
 the undertaking (describing them by their proper  
 names), in the matter of the special act (citing it),  
 according to the method prescribed by any act for the  
 time being in force for regulating monies paid into  
 the said courts; and such monies shall remain so de-  
 posited until the same be applied to some one or more  
 of the following purposes (that is to say):

the purchase or redemption of the land-tax, or  
 the discharge of any debt or incumbrance af-  
 fecting the land in respect of which such money  
 shall have been paid, or affecting other lands  
 settled therewith to the same or the like uses,  
 trusts, or purposes; or

Application  
 of monies  
 deposited.

the purchase of other lands to be conveyed,  
 limited, and settled upon the like uses, trusts,  
 and in the same manner, as in the lands in  
 respect of which such money shall have been  
 paid, stood, settled; or

If such money shall be paid in respect of any  
 buildings taken under the authority of this or  
 the special act, or injured by the proximity of  
 the works, in removing or replacing such build-  
 ings, or substituting others in their stead, in  
 such manner as the Court of Chancery shall  
 direct; or

In payment to any party becoming absolutely en-  
 titled to such money (a).

(a) As to the manner in which the Court of Chancery will  
 apply compensation money deposited, see *ex parte Northwick*,  
 4 Y. & C. 166; *ex parte Gardner*, 4 Y. & C. 503; *ex parte*  
*Newton*, 4 Y. & C. 518; *ex parte Newton*, 4 Y. & C. 518.

As to the mode of paying money into the Bank, and the form  
 of the order (to be in compliance with this section), see *Taylor*  
*and Benson*, 2 Q. B. 1030; 3 Railway Cases, 65.

Order for application and investment meanwhile.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made upon the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and where such money can be so applied it may, upon the like order, be invested by the said Accountant-general in the purchase of three per centum consolidated or four per centum reduced Bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who for the time being have been entitled to the rents and profits of the lands.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

LXXI. If such purchase money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds, then it shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees nominated by the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, such nomination to be signified in writing under the hands of the party so entitled, and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to the monies, such nomination may lawfully be made by their respective husbands, guardians, commissioners, or trustees; but such last-mentioned application for the monies shall not be made unless the parties of the undertaking approve thereof and of the persons named for the purpose; and the money so received by such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to monies paid into the Bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not

LXXII. If such money shall not exceed

twenty pounds, the same shall be paid to the person entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their use and benefit, or in case of the coverture, or, if, by idiotcy, lunacy, or other incapacity of any parties, then such money shall be paid, for their use to the respective husbands, guardians, committees or trustees of such persons.

exceeding  
20*l*. to be  
paid to  
parties.

XIII. All sums of money exceeding twenty pounds, which may be payable by the promoters of any undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person who shall not be entitled to the rents and profits of such lands, or of the interest therein contracted to be sold by him, absolutely for his own use, shall be paid into the bank or to trustees in accordance with the provisions aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to appropriate to his own use any portion of the sums so contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or of any bridges, tunnels, or other accommodation, or for assenting to or not opposing the provisions of the bill authorizing the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of several parties interested in such lands, as well as for the session as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said Court, as the case may be, to allot to any tenant or occupier, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held

All sums  
payable  
under con-  
tract with  
persons not  
absolutely  
entitled, to  
be paid into  
Bank.

therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXIV. Where any purchase money or compensation paid into the Bank under the provision of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in land less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate (a), it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as may be thereto as may be.

(a) It has been recently decided under this clause that if an ecclesiastical corporation sole has a reversionary interest in land, the money must be paid into court, the interest being accumulated, until the reversion falls into possession, and the corporation is not entitled to receive any part of the interest. *the Rector of Lambeth*, 7 Law Times, 221, Canc. 1846.)

Upon deposit being made, the owners of the lands to convey, or in default thereof the lands to vest in the promoters of the undertaking upon a deed poll being executed.

LXXV. Upon deposit in the Bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provision of this or the special act, or any act incorporated therewith, the owner of such lands, including any such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey the lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if

to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the cause or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the consideration made in respect thereof, and declaring the nature of such default having been made, and such deed shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold or conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a court of law or by arbitrators, or by a surveyor appointed by the justices as herein provided, and shall have been ascertained as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such persons, and all parties on behalf of whom they are or have been enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

XXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

convey or release such lands as directed by the promoters of the undertaking, or if any such promoters be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the trial before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to pay the purchase money or compensation payable in respect of such lands, or any interest thereon to the Bank, in the name and with the privy seal of the comptroller-general of the Court of Chancery in England, or the Court of Exchequer in Ireland, or to any person or persons to be named and placed, except in the cases herein otherwise provided for, to his account there, to the credit of the persons interested in such lands (describing them as the promoters of the undertaking can do), and the control and disposition of the said court.

(a) As to what may amount to a "neglect, refusal to make out a title, such as to authorize a company to sue into court, see *Doe dem. Payne v. Bristol and Exeter Railway Company*, 2 Railway Cases, 75. After an agreed purchase of land with leaseholders for a long term, an under lessee who had been expelled for breach of covenant, and had given up his lease, but had executed a surrender, set up an adverse title, and claimed a value of the lease. Under these circumstances, the company were held to have rightly paid the money into court. However, the whole interest in the premises vested in the company notwithstanding the defective surrender: an issue being given to try whether the vendors had any, and if so, what interest in the premises. *Ex parte Iraushand*, 3 Younge &

In a recent case a similar clause to the above was held to be prospective and applicable to the period after the money had been agreed upon, or the compensation assessed by the jury. It was therefore held that a Company was not obliged immediately after the finding by the jury, to pay the amount assessed by them into the Court of Chancery, before taking possession of the land, but that they were bound upon the owner to make out a title, even although the company failed to disclose it before the jury made their assessment. Alderson B. "the reason why the Company may sue the jury to assess the compensation that is to be paid is, where the owner of the land fails to prove his title, and his omission to do so prevents any satisfactory offer being made to him, and any valid agreement from being made."

It is plain that the party ought to have the opportunity of relying the defect as to his previous omission to prove his. After the decision of the jury he ought to have a *locus standi*, and if he still refuses to proceed, the Company may proceed without him." *Doe and Hutchinson, v. The Manchester, and Rosendale Railway Company*, 15, L. J., N. S., p. 208; 9 Jurist, 949.

To enforce the payment of money into court under this section after a sum has been assessed or agreed upon, it is necessary to show that a good title *cannot* be made out, and not that it would be difficult and expensive. *Reg. v. Deptford Company*, 8 A. & E. 910. Nor is it any answer to an order to enforce such payment, that at the time of its being made, the period limited for compulsory purchase is expired.

XXVII. If any such deposit of money as last aforesaid being made, the cashier of the Bank shall pay to the promoters of the undertaking or to the person paying in such money by their direction, a receipt for such money, specifying therein for what purpose and for whose use (described as aforesaid) the same money have been received, and in respect for what purpose the same shall have been paid in, and it shall be lawful for the promoters of the undertaking if they think fit, to execute a deed poll under their common seal, if they be a corporation, or if they be an individual, under the hands and seals of the promoters, or any two of them, containing a declaration of the lands in respect whereof such deposit of money have been made, and declaring the circumstances under which and the names of the parties to whose benefit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in the lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

Application  
of monies so  
deposited.

**LXXVIII.** Upon the application by any party making claim to the money so last aforesaid, or any part thereof, or to in respect whereof the same shall have posited, or any part of such lands, or any the same, the said Court of Chancery in the Court of Exchequer in Ireland may, in way, as to such court shall seem fit, money to be laid out or invested in the or may order distribution thereof, or pay dividends thereof, according to the respective titles, or interests of the parties making claim to money or lands, or any part thereof, and such other order in the premises as to such court shall seem fit (a).

(a) Where there are more than one applicant the Court of Chancery will in some cases direct to ascertain their respective claims. *Ex parte Younge & Coll.* 721. Where, however, the purchase agreement has been made for the purchase of lands, or to whom, as apparent owner, the purchase money has been awarded applies; it seems that upon his own affidavit if it be not contradicted by that of any other party the court is bound to pay to him the compensation money which has been deposited on his failing to make out a title in favour of the company. *Ex parte Grange*, 3 Younge & Coll. 721. Mr. Baron Alderson observed,—that there were no objections to such an application, as it was obvious that the applicant, in applying for the money, might have a very limited title to the lands, but, nevertheless granted the order. On a subsequent application being made on behalf of Lord Ellenborough in the matter of the Birmingham and Gloucester Railway Company, there being no other evidence of title than Lord Ellenborough's affidavit, he said,—“the authorities, although I do not comprehend them, seem to say that a party may sell to the company lands in strict equity, and then apply for the money out of court. How the order is to be made must be made.”

Party in  
possession  
to be  
deemed the  
owner.

**LXXIX.** If any question arise respecting the lands in respect whereof such money has been so paid or deposited as aforesaid, the court may order the party respectively in possession of such lands to



reof, or in receipt of the rents of such  
 eing entitled thereto at the time of such  
 ; purchased or taken, shall be deemed to  
 lawfully entitled to such lands, until the  
 shown to the satisfaction of the court ;  
 the contrary be shown as aforesaid, the  
 a possession, and all parties claiming under  
 nsistently with their possession, shall be  
 itled to the money so deposited, and to  
 is or interest of the annuities or securities  
 herewith, and the same shall be paid and  
 ordingly (a).

statute 5 & 6 W. 4, c. 107, for making the Great  
 lway, contained the following provisions, almost  
 will be seen, with those in the above clauses.  
 tion enacted, " That in case any party to whom  
 all be agreed or awarded to be paid, for the pur-  
 lands, to be taken or used under or by virtue of  
 f this act, shall refuse or neglect to accept the  
 convey the premises purchased, or shall refuse,  
 unable to make a title to such premises, to the  
 the company, or shall be absent from England,  
 be conveniently found, &c. ; it shall be lawful for  
 to order the money so agreed or awarded to be  
 sed to be paid, into the Bank of England, in the  
 h the privity of the Accountant general of the  
 hequer, to be placed to his account to the credit  
 interested in the said lands (describing them as  
 l company can do) subject to the control and dis-  
 e said court ; and the court on the application of  
 king claim to such money, or any part thereof,  
 s hereby empowered in a summary way of pro-  
 ewise, to order the same to be laid out and in-  
 public funds, and to order distribution thereof,  
 f the dividends thereof, according to the estate,  
 est of the party making claim thereto : or to make  
 the premises as to the court shall seem proper.  
 ection of the same act, it is enacted, that where  
 shall arise in reference to the provisions aforesaid,  
 upon the said act, touching the title of any party  
 or to any interest in any lands to be taken or  
 ance of this act, the parties respectively who shall  
 possession, or receipt of the rents and profits of  
 t the time of such purchase, and all persons and  
 claiming under such parties, or under or consis-

tently with the possession of such parties, shall be ( have been lawfully entitled to such lands or such interest in, according to such possession, until the contrary be shewn to the satisfaction of the court : and the dividends of the annuities or securities to be purchased with the money, and also the capital of such annuities and securities, shall be paid, applied, and disposed of accordingly.

The 42nd section enacts, that when payment or performance of such sum of money as shall have been agreed upon by the parties, or awarded by a jury for the purchase of such lands, or for any other charge, or as a compensation for any injury to the respective proprietors of such lands, or persons respectively interested therein, and entitled to receive such money or compensation respectively, within three months after the same shall be so agreed upon or awarded, if the parties so respectively interested and entitled cannot be found, or shall be absent from England, or shall refuse to receive such money as aforesaid, or shall refuse, or be unable to make a good title to such lands, (to the satisfaction of the said company) or if any party entitled unto or interested in such lands shall not be known, or shall be absent from England, or shall refuse, neglect, or be unable to convey the same upon payment of such money into the Bank of England before directed, to the credit of the parties interested in such lands, it shall be lawful for the said company immediately to enter upon such lands, and thereupon such lands, and the rents and profits thereof, together with the yearlly interest thereof, and all the estate, use, trust, and interest of the same therein, shall thenceforth be vested in and become the property of the company, to and for the purposes of this Act.

Under this act, the company having contracted to purchase a piece of land of the party in possession, and having entered into possession under the contract, objected to the company paying the money into Court to the credit of the party to whom they had so contracted : it was held, that such party, on *his own affidavit of title only*, was entitled to pay the money out of Court to his own absolute use. Alderson said, "there were great objections to such an application, but it was obvious that the party applying for the money had a very limited interest in the lands, but that he had the orders of former judges, and upon the authorities he felt himself bound to accede to this application." *parte Grange*, 3 Younge & Coll. 62.

A similar application was made on behalf of Lord Ellenborough in the matter of the Birmingham and Gloucester Railway Act, there being no other evidence of the title to the lands than Lord Ellenborough's affidavit. Alderson said, "I am bound by the authorities, though I do not comprehend the principle." The party may sell to the company lands in strict accordance with the provisions of the Act.

to then apply for the money out of Court. However, this must be made. Note to *Ex parte Grange*.

Where a company agreed to purchase premises of parties who had a long lease, but had underlet the premises to a tenant who had been expelled for breach of covenant, but had not surrendered his lease: on petition by this undertenant to have money paid out of Court, the Court was of opinion that whole interest in the premises vested in the company, notwithstanding the defective surrender; but an issue was directed to determine the question, whether, when the contract was made by the company, the under lessee had any interest in the premises, and if so, what was the proportional value of such interest. *Ex parte Iraushand*, 3 Younge and Coll. 721.

XXX. In all cases of monies deposited in the Court under the provisions of this or the special act, any act incorporated therewith, except where monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to give the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the foregoing matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say), the cost of the purchase or taking of the lands which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest on the securities upon which such monies shall be invested, and for the payment out of Court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by

Costs in cases of money deposited.

litigation between adverse claimants: It is always, that the costs of one application for re-investment in land shall be allowed, and shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that the benefit of the parties interested in the monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court if it think fit, to order the costs of any such proceedings to be paid by the promoters of the taking (a).

(a) Where it was enacted (Hull and Selby Railway Act, 6 W. 4, c lxxx), that where the company should purchase of incapacitated persons, under the authority of the court, it should be lawful for the Court of Exchequer to order reasonable costs, charges, and expenses attending the purchase, and also all the costs, charges, and expenses of the interest of the purchase money, in government or real securities of the re-investment of the same securities in other lands, "together with the necessary costs, charges, and expenses of obtaining the proper orders, and of all other proceedings for such purposes, and for the payment of the dividends and interest of the government or real securities, and of the re-investment of the same securities in other lands, together with the necessary costs, charges, and expenses of obtaining the proper orders, and of all other proceedings for such purposes, and for the payment of the dividends and interest of the government or real securities, upon which such purchase money may be invested, &c., to be paid by the company." It was held, by Lord B., that the company were liable for the costs of the purchase, the payment of the dividends, but not the costs of the interest of the dividends. *Ex parte Althorpe*, 3 Young 396.

The same point was subsequently decided by the Lord Baron, on the construction of the same act.

Where purchase money had been paid into Court under a railway act (which provided that the costs of a purchase of other lands and of the petition to obtain such purchase should be paid by the company), and the trustees and cestui que trust of the land joined in a petition for the payment out of part of the purchase money and the investment in stock of the remainder, it was held that the company were not liable for the costs of such a petition. *Ex parte Molyneux*, 5 L. R. 474, July, 1845. See *Ex parte Marshall*, 4 Railw

*Ex parte Madon*, Id. 49; *Ex parte Lord Palmerston*, Id. 55; *Ex parte Tetley*, Id. 55.

and with respect to the conveyances of lands, be it enacted as follows :

Convey-  
ances.

XXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or act incorporated therewith may be according to forms in the said schedules (A.) and (B.) respectively to this act annexed, or as near thereto as circumstances of the case will admit, or by deed or any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant upon such declaration, or by construction of law, on any estate or interest so thereby conveyed, and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the contribution therein mentioned; but although terms of years be thereby merged, they shall in equity enjoy the same protection as if they had been kept distinct, and assigned to a trustee for the promoters of the undertaking to attend the reversion and income.

Form of  
convey-  
ances.

XXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and the costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying title to such lands, terms or interests, and of

Costs of  
convey-  
ance

making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

**Taxation of costs of conveyances.**

**LXXXIII.** If the promoters of the undertaking and the party entitled to any such costs shall agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a master in Chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties, and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same manner as any other costs payable under an order of the court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, and upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the cost of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted from him accordingly in his certificate of such taxation.

**Entry on Lands.**

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows :

**Payment of price to be made previous to entry, except to survey, &c.**

**LXXXIV.** The promoters of the undertaking shall not, except by consent of the owner, (a), or occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special act, until they shall either have paid to every person having an interest in such lands, or deposited in the Bank in the manner herein mentioned the purchase

ney or compensation agreed or awarded to be  
d to such parties respectively for their respective  
erests therein : Provided always, that for the pur-  
e merely of surveying and taking levels of such  
ds, and of probing or boring to ascertain the  
ure of the soil, and of setting out the line of the  
rks, it shall be lawful for the promoters of the  
dertaking, after giving not less than three nor  
re than fourteen days' notice to the owners or oc-  
piers thereof, to enter upon such lands without  
vious consent, making compensation for any  
mage thereby occasioned to the owners or occu-  
rs thereof.

(a) A company (whose act contained a clause similar to  
b) entered upon land and commenced works before the  
ount to be paid by them had been determined, but under a  
al consent of the owner stated by him to be qualified, but  
then alleged to be general ; the Court refused to stop the  
by injunction, as complete justice could be done by com-  
g the company to pay for the land, but they were ordered  
deposit the proximate value, until the amount should be  
ermined. *Langford v. the Brighton, Lewes, and Hastings*  
*Railway Company*, 4 Railway Cases, 69.

LXXXV. Provided also that if the promoters of Promoters  
e undertaking shall be desirous of entering upon to be al-  
nd using any such lands before an agreement shall lowed to  
ve been come to or an award made, or verdict enter on  
iven for the purchase money or compensation to lands before  
e paid by them in respect of such lands, it shall be purchase,  
awful for the promoters of the undertaking to de- on making  
osit in the Bank by way of security, as hereinafter deposit by  
entioned, either the amount of purchase money or way of se-  
compensation claimed by any party interested in or curity and  
ntitled to sell and convey such lands, and who shall giving  
not consent to such entry, or such a sum as shall by bond.  
e surveyor appointed by two justices in the manner  
hereinbefore provided in the case of parties who  
cannot be found, be determined to be the value of  
ich lands, or of the interest therein which such  
arty is entitled to or enabled to sell and convey, and

also to give to such party a bond, under the corporate seal of the promoters if they be a corporation, if they be not a corporation under the hands and seals of the said promoters, or any two of them, with sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for the payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands in the case may require, under the provisions contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters in respect of the undertaking in respect of the lands so entered together with interest thereon at the rate of five pounds *per centum per annum*, from the time of coming on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions contained: and upon such deposit by way of security being made as aforesaid, and such bond delivered or tendered to such non consenting parties as aforesaid, it shall be lawful for the promoters the undertaking to enter upon and use such lands without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Upon deposit being made, cashier to give receipt.

LXXXVI. The money so to be deposited as aforesaid shall be paid into the Bank in the name of the promoters with the privity of the Accountant-general of the Court of Chancery in England or the Court of the Exchequer in Ireland, to be placed to his account to the credit of the parties interested in or entitled to sell or convey the lands so to be entered upon by them who shall not have consented to such entry subject to the control and disposition of the said court.



Upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in Bank annuities, Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the proceeds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Deposit to remain as a security, and to be applied under the direction of the Court.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant general of the Court of Chancery in England or the Court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the

The company may pay the deposit money into the Bank by way of security during the time that the office of the accountant general is closed.

promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant General, and upon production of such direction to the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the Report Office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any land which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such land the sum of ten pounds, over and above the amount of damages done to such lands by reason of entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands,

n in any of the superior courts : Provided nothing herein contained shall be held to promoters of the undertaking to the pay- such penalties as aforesaid, if they shall without collusion have paid the com- eed or awarded to be paid in respect of s to any person whom the promoters of ng may have reasonably believed to be to, or shall have deposited the same in the benefit of the parties interested in the ide such deposit by way of security in of as hereinbefore mentioned, although ay not have been legally entitled thereto.

he trial of any action for any such penalty Decision of justices not conclusive as to the right of the promoters. he decision of the justices under the pro- before contained shall not be held con- the right of entry on any such lands by s of the undertaking.

any case in which, according to the pro- Proceed- ings in case of refusal to deliver possession of lands. s or the special act, or any act incorpo- th, the promoters of the undertaking are enter upon and take possession of any l for the purposes of the undertaking, occupier of any such lands or any other to give up the possession thereof, or omoters of the undertaking from entering g possession of the same, it shall be law- omoters of the undertaking to issue their he sheriff to deliver possession of the erson appointed in such warrant to re- e, and upon the receipt of such warrant all deliver possession of any such lands and the costs accruing by reason of the xecution of such warrant, to be settled , shall be paid by the person refusing to on, and the amount of such costs shall be . retained by the promoters of the under- he compensation, if any, then payable by

them to such party, or if no such compensation payable to such party, or if the same be less amount of such costs, then such costs, or the amount thereof beyond such compensation, if not paid, shall be levied by distress, and upon execution to any justice for that purpose he shall return a warrant accordingly.

Parties not to be required to sell part of a house.

XCII. And be it enacted, that no party at any time be required to sell or convey to the railway company any part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof (a).

(a) A company may be compelled to purchase a yard adjoining a house or manufactory, at least if a part of the premises. On an inquiry as to the value of a certain house, the jury found "that at the time of the passing of the act and hence hitherto, the yard and garden were parcel of and included in the description of the said premises occupied as such parcel thereof." It was held that the garden, though not specified in the schedule to the notice to take lands, nor in the warrant for summary judgment passed to the company. *Taylor v. Clemson* Cases, 65.

"By the grant of a messuage or house, messuage, orchard, garden, and curtilage do pass." Co. Lit.

The Greenwich Railway Act enacted that "if the owner of any house, manufactory, ground, or building, which shall be situate within fifty feet of the railway should give notice to the company, the company should treat for the purchase of the whole of such house, &c.;" and in another section, "that if any person were applied to by them, to sell any part of any house, warehouse, &c. in actual occupation, and should refuse to do so, the company should be at liberty to purchase the whole of such house, warehouse, &c. and if they should purchase the whole of such house, warehouse, &c. such person should not be obliged to sell them a part thereof."

*S. & Co.* were lessees of premises on which were a manufactory, warehouse, &c., a principal dwelling-house, garden, and five smaller dwelling-houses, which premises were so situated that a straight line drawn parallel to the railway at the distance of fifty feet would divide the principal dwelling-house and the garden, but would pass between the garden and the premises and the railway. *S. & Co.* required the

held that the act did not oblige them to purchase  
rule for a mandamus to the company to cause  
to be assessed for the whole was discharged.

## Intersected Lands.

## Owners of intersected lands may insist on sale.

**Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value.**

require such owner to sell them such piece ( and any dispute as to the value of such piece or as to what would be the expense of making communication, shall be ascertained as here provided for cases of disputed compensation; the occasion of ascertaining the value of ( required to be taken for the purposes of the the jury or the arbitrators, as the case may be if required by either party, ascertain by them or award the value of any such severed piece and also what would be the expense of making communication.

*Copyholds.*

And with respect to copyhold lands, be it as follows :

Convey-  
ance of  
copyhold  
lands to be  
enrolled.

XCV. Every conveyance to the promote undertaking, of any lands which shall be of or customary tenure, or of the nature thereof be entered on the rolls of the manor of which same shall be held or parcel; and on payment by the steward of such manor of such fees as would be payable to him on the surrender of the same lands to a purchaser thereof he shall make such enrolment and every such conveyance, when so enrolled shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of free tenure, nevertheless, until such lands shall be enfranchised by virtue of the powers herein contained, they shall continue subject to the same rents, heriots, and services as were thereto due and of right accustomed.

Copyhold  
lands to be  
enfranchised.

XCVI. Within three months after the completion of the conveyance of any such copyhold or customary lands, or within one month after the promoter of the undertaking shall enter upon and make use of the same for the purposes of the works, or if shall first happen, or if more than one parcel of lands holden of the same manor shall be taken by them, then within one month after

rcels shall have been so taken or entered  
n, the promoters of the undertaking shall  
e whole of the lands holden of such manor,  
y them to be enfranchised, and for that  
all apply to the lord of the manor whereof  
are holden to enfranchise the same, and  
o him such compensation in respect thereof  
agreed upon between them and him, and  
es fail to agree respecting the amount of  
isation to be paid for such enfranchisement  
hall be determined as in other cases of dis-  
pensation ; and in estimating such compen-  
loss in respect of the fines, heriots, and  
ces payable on death, descent, or aliena-  
y other matters which would be lost by the  
such copyhold or customary lands in the  
of the undertaking, or by the enfranchise-  
e same, shall be allowed for.

Upon payment or tender of the compen- Lord of the  
greed upon or determined, or on deposit Manor to  
the Bank in any of the cases hereinbefore enfranchise  
alf provided, the lord of the manor whereof on payment  
hold or customary lands shall be holden of compen-  
nchise such lands, and the lands so sation.  
shall for ever thereafter be held in free  
on socage ; and in default of such en-  
ent by the lord of the manor, or if he fail  
a good title thereto to the satisfaction of  
ters of the undertaking, it shall be lawful  
if they think fit, to execute a deed poll,  
ed, in the manner hereinbefore provided  
e of the purchase of lands by them, and  
the lands in respect of the enfranchisement  
ch compensation shall have been deposited  
d shall be deemed to be enfranchised, and  
ever thereafter held in free and common

[. If any such copyhold or customary lands Apportion-  
ment of

copyhold  
rents.

be subject to any customary or other rent, and only of the land subject to any such rent be required to be taken for the purposes of the special act; and the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken in virtue of this or the special act, or the apportionment of such rents, shall not affect in other respects the custom by or under which any such copyhold or customary lands not taken for such purposes are now held; and if any of the lands so required be taken from any portion of the rents to which the lands are now subject jointly with any other lands, such lands so taken shall be charged with the rateable value of only of such rents, and with reference to any such apportioned rents, the lord of the manor shall have the same rights and remedies over the lands to which such apportioned rent shall have been assigned as he had previously over the whole lands subject to such rents for the whole of such

*Common  
Lands.*

Compensation for common lands, where held of a manor, &c. how to be paid.

And with respect to any such lands being copyhold or waste land, be it enacted as follows :

XCIX. The compensation in respect of the value in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, and he shall be entitled to the same or to such part thereof as he shall be entitled to, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights of common over such lands, including therein any commonable or other rights to which the lord of the manor is now entitled, other than his right in the soil of such lands, shall be determined and paid and apportioned in the manner hereinafter provided with respect to copyhold lands the right in the soil of which shall be



rs; and upon payment or deposit in the compensation so determined all such and other rights shall cease and be

payment or tender to the lord of the manor, &c. to convey to the promoters of the undertaking, on receiving compensation for his interest. such other party as aforesaid, of the common which shall have been agreed upon or deposited thereof in the Bank in any manner hereinbefore in that behalf provided, the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor or such other party as aforesaid, had been the simple owner of such lands at the time of such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed of conveyance, in the manner hereinbefore provided, in the case of the purchase of lands by them, of the lands in respect whereof such last compensation shall have been deposited as if they had vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the common which other rights theretofore affecting the lands in respect whereof such rights shall have been extinguished or deposited of the compensation for the same as hereinafter provided.

compensation to be paid with respect to lands being common lands, or in the nature of a right to the soil of which shall belong to commoners, as well as the compensation to be paid for commonable and other rights in or over lands, the right in the soil whereof shall not be commoners, other than the compensation to be paid for common lands where not held of a manor how to be ascertained.

tion to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in the lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be preceded by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective county or counties in the neighbourhood in which such lands situate, the last of such insertions being not less than fourteen nor less than seven days prior to such meeting: and notice of such meeting shall be given not less than seven days previous to the holding thereof, be affixed upon the door of the church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed, and if such lands be parcel or holden of any lord or lords, a like notice shall be given to the lord or lords of the manor.

Meeting to appoint a committee.

CIII. It shall be lawful for the meeting of the parties to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and the decision of the majority of the committee so appointed shall be binding on the minority and all absent parties.

Committee to agree

CIV. It shall be lawful for the committee so appointed to agree

an agreement with the promoters of the undertaking, for the compensation to be paid for the exercise of such commonable and other rights, and relating thereto, for and on behalf of and all other parties interested therein; and all parties shall be bound by such agreement; it shall be lawful for such committee to make such compensation so agreed to be paid, and the payment of such compensation by such committee or any three of them, shall be an effectual discharge of the promoters; and such compensation when received, shall be apportioned by the committee among the parties interested therein, according to their interests, but the promoters of the undertaking shall not be bound to see to the application of such compensation, nor be liable for the misapplication or non-payment thereof.

Upon such committee being appointed they shall agree with the promoters of the undertaking as to the amount of the compensation to be paid; and if the same shall be determined as in the case of disputed compensation.

Upon being duly convened by the promoters of the undertaking, no effectual meeting of the committee shall be held to exercise such commonable or other rights, or if, taking place, such meeting shall be adjourned, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as herein-before provided in the case of parties who cannot be found.

Upon payment or tender to such committee, or to any one of them, or if there shall be no such payment or tender, then upon deposit in the Bank in the name of the promoters, the sum so paid or deposited shall have been agreed upon or determined as to the amount of such commonable or other rights, and shall be a discharge to the promoters, and the lands shall vest in the promoters.

it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll stamped, in the manner herein-before provided in the case of the purchase of lands by them, and the lands in respect of which such compensation have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by and with the assent of the judges thereof, to make an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in relation thereto, for the benefit of the parties interested, as the court shall think fit.

*Lands in mortgage.*

**Power to redeem mortgages.**

And with respect to lands subject to mortgage it enacted as follows :

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the lands subject to the mortgage or any such lands which are required for the purposes of the special act, whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled to the same in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage together with his costs and charges, if any, and six months additional interest, and thereupon the mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give

writing to such mortgagee that they will pay the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice: and if they shall have given such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

CIX. If, in either of the cases aforesaid, upon demand for payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he shall fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit to execute a deed poll, duly stamped in the manner herein-before provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any shall be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee in such lands, shall vest in the promoters of the undertaking, and they shall

Deposit of mortgage money on refusal to accept.

be entitled to immediate possession thereof, if such mortgagee were himself entitled to such session.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be value than the principal, interest, and costs thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the person entitled to the equity of redemption thereof (on the one part and the promoters of the undertaking on the other part, and if the parties aforesaid agree respecting the amount of such value or compensation, the same shall be determined as in cases of disputed compensation; and the amount of such value or compensation, being so agreed upon and determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey and lease all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall

Deposit of money when refused on tender.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to discharge his interest in such mortgage, or to adduce sufficient title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this act in such cases, and every such payment or deposit so made and accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, shall be a full discharge of such mortgaged lands from the money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands, as

estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were not self entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or contract or other obligation, other than the right to the lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

**CXII.** If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on the lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption in such land on the one part, and the promoters of the undertaking on the other, and if the parties so said fail to agree respecting the amount of such value or compensation the same shall be determined in other cases of disputed compensation; and the amount of such value or compensation, being so ascertained upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will admit; and thereupon such mortgagee shall convey and release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be indorsed on the deed relating to such mortgage, and shall be signed by the

Sum to be paid where part only of mortgaged lands taken.

mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of the redemption of the lands comprised in such mortgage deed.

Deposit of  
money  
when re-  
fused on  
tender.

CXIII. If, upon payment or tender to any mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into a Bank, in the manner provided by this act in the case of monies required to be deposited in such Bank, and such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, and as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so released from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon the lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee was himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for



purposes of the special act, as he would otherwise have had or been entitled to for recovering or coming payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

CXIV. Provided always, that in any of the cases herein-before provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions herein-before contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the redemption of the sum so paid off, such costs in case of difference to be taxed and payment thereof entered in the manner herein provided with respect to the costs of conveyances; and if the rate of interest charged by such mortgage be higher than at the time the same being so paid off can reasonably be expected to be obtained on re-investing the same, and being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled as against such mortgagee, to possession of the mortgaged lands under the provision herein-before contained.

And with respect to lands charged with any rent-vice, rent-charge, or chief or other rent, or other

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

*Rent  
Charges.*

payment or incumbrance not hereinbefore provided for, be it enacted as follows :

Release of  
lands from  
rent  
charges.

CXV. If any difference shall arise between promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof of the lands required for the purposes of the special act, the same shall be determined as in other cases of reputed compensation.

Release of  
part of  
lands from  
charge.

CXVI. If part only of the lands charged with such rent-service, rent-charge, chief or other payment, or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the promoters of the lands on the one part and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices ; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release the whole or part of the lands required, on condition or in consideration of such other lands, remaining exclusively subject to the whole thereof.

Deposit in  
case of  
refusal to  
release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a deed of release of such charge ; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner hitherto before provided in like cases, and also, if they think fit, to execute a deed poll duly stamped, in the

ereinbefore provided in the case of the purchase  
nds by them, and thereupon the rent-service,  
charge, chief or other rent, payment, or incum-  
ce, or the portion thereof in respect whereof such  
pensation shall so have been paid, shall cease and  
extinguished.

XVIII. If any such lands be so released from  
such charge or incumbrance, or portion thereof,  
which they were subject jointly with other lands,  
the last-mentioned lands shall alone be charged  
the whole of such charge, or with the remainder  
eof, as the case may be, and the party entitled  
he charge shall have all the same rights and  
edies over such last-mentioned lands, for the  
le or for the remainder of the charge, as the case  
be, as he had previously over the whole of the  
s subject to such charge; and if upon any such  
ge or portion of charge being so released the  
or instrument creating or transferring such  
ge be tendered to the promoters of the under-  
ing for the purpose, they or two of them shall  
cribe, or if they be a corporation shall affix their  
mon seal to a memorandum of such release in-  
ed on such deed or instrument, declaring what  
of the lands originally subject to such charge  
have been purchased by virtue of the special  
and if the lands be released from part of such  
ge, what proportion of such charge shall have  
released, and how much thereof continues pay-  
or if the lands so required shall have been  
sed from the whole of such charge, then that  
remaining lands are thenceforward to remain  
sively charged therewith; and such memo-  
um shall be made and executed at the expense of  
promoters of the undertaking, and shall be evi-  
e in all courts and elsewhere of the facts therein  
ed, but not so as to exclude any other evidence of  
same facts.

Charge to  
continue  
on lands  
not taken.

*Leases.*

Where part only of lands under lease taken, the rent to be apportioned.

And with respect to lands subject to leases, enacted as follows :

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, in respect of all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by the lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act in the same manner as they would have done in case such part only of land had been included in the lease.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him by reason of the severance of the land required from those not required, or otherwise by reason of the execution of the works.

Compensation to be made to

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and

such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, (a) and for any loss or injury he may sustain, if a part only of such lands be required compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any lands in their possession required for the purposes of the special act.

(a) *Any just allowance which ought to be made to him by the incoming Tenant.*]—Some cases decided under the Hungerford Market Act may perhaps throw some light upon the construction of these sections. The Hungerford Market Company were empowered to determine tenancies, making compensation to tenants “who shall be required to quit before the expiration of their term,” and who shall sustain any loss, damage, or injury in respect of any interest whatever for good will, improvements, tenants’ fixtures, or otherwise, which they now enjoy, by reason of the passing of the act.

A tenant from year to year was ejected by the Company, after giving a regular half-year’s notice to quit. It appeared that she had been for many years in possession; and that the tenancy was not likely to have been determined if the act had not passed. The court held that she was entitled to compensation for the whole of her estate interest which she had in the premises at the time the act passed; and that the good will, though of premises on a certain tenure, was protected by the act as an interest, and would, practically, have been valuable as between the tenant and a purchaser, though it was not a legal interest as against the landlord. *Ex parte Farlow*, 2 B & Ad. 341.

A lessee whose term expired on the day the company came into possession, obtained leave to hold on until the premises were sold, and did so for a year and three quarters, at the end of which time he quitted, having received half a year’s notice; his predecessor was a tenant who came at Christmas two years before, and had

held from year to year, and who knew of the above proceedings and also received notice to quit, was held entitled to compensation for good will." *Ex parte Hill*, 4 B. & Ad. 592. In another case compensation was claimed by a party who in 182 became the assignee of a lease for fourteen years, granted in 1818, on premises on the estate purchased by the company. The lease contained covenants to yield up the premises, with all fixtures and improvements, at the end of the term, and not to underlet or assign without leave, but this latter clause had not been introduced in contemplation of any advantage to be taken of it by the landlord with reference to the act: the company suffered the lease to expire, and then turned out the tenant; it was held that he was entitled to have compensation assessed for the loss, if any, sustained by him, in respect of good will on the claim of a beneficial renewal of his lease; but not for fixtures set up or purchased, and for improvements made by him, inasmuch as he had no legal interest in them; it was held nevertheless, that these might be considered by the jury in estimating the claim of a beneficial renewal. *Ex parte Gorling*, 4 B. & Ad. 596, see note, p. 600. Quære, whether the words "any just allowance which ought to be made to him by an incoming tenant" may include "good will?"

Where however, an act required that compensation should be given for "the value of the unexpired term or interest" without any additional words, it was held that a tenant, whose lease had been several times renewed for terms of seven years, and who was a tenant of the landlord at the time of the last renewal, had declined to renew for 14 years, but assured the tenant that he would not be turned out at the end of seven, upon which the tenant laid out money in improvements, (during the seven years the landlord sold the reversion to the company and died, and the company gave notice to quit at the end of the term), had under these circumstances no claim to compensation, *Rex v. Liverpool and Manchester Railway Company*, 4 A. & E. 650.

In order to establish a claim to compensation, a tenant should give up his interest to the company on the day named in the notice, and by holding on with or without their consent, will generally be considered to have waived his claim to compensation. *Reg. v. London and Southampton Railway Company*, Railway Cases, 717; 10 A. & E. 3; 2 P. & D. 343.

The Court has refused to stay proceedings in an action of ejectment until compensation to the tenant should be paid, *Ex parte Farlow*, 2 B. & Ad. 341. That it had not been paid however, or the proper steps taken for ascertaining it, would probably be a good defence to the action. *Wainwright v. Randen*, 5 M. & W. 602, per Lord Abinger.

With reference to the effect of the notice to quit on the relation of a tenant to his landlord, it has been decided, that when a tenant from year to year, at a rent payable half-yearly, is turned out on the first of April and the first of October, received a notice

railway Company, which expired in the middle viz., the 28th of July, upon which he quitted, appear but that he might have held out longer, the rent of the half-year ending on the first of *Swright v. Ramsden*, 5 M. & W. 602; if how- compelled by the company to quit on the day ice, it seems the rent would have been appor- or not so compelled however he might have ation.

any party, having a greater interest at will, claim compensation in respect red term or interest under any lease or uch lands, the promoters of the under- quire such party to produce the lease or ct of which such claim shall be made, dence thereof in his power; and if after in writing by the promoters of the un- h lease or grant, or such best evidence t produced within twenty-one days, the ing compensation shall be considered as ng only from year to year, and be en- nsation accordingly.

nd be it enacted, that the powers of the ae undertaking for the compulsory pur- of lands for the purposes of the special be exercised after the expiration of the od, and if no period be prescribed not ation of three years from the passing of

spect to interests in lands which have n omitted to be purchased, be it enacted

*Interests  
omitted  
to be pur-  
chased.*

at any time after the promoters of the all have entered upon any lands which visions of this or the special act, or any ed therewith, they were authorized to which shall be permanently required for f the special act, any party shall appear to any estate, right, or interest in or ng such lands which the promoters of

Promoters  
of the un-  
dertaking  
empowered  
to purchase  
interests in  
lands the  
purchase  
whereof

mortgagee ; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of the redemption of the lands comprised in such mortgage deed.

Deposit of  
money  
when re-  
fused on  
tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this act in the case of monies required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them ; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof ; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for



the purposes of the special act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

CXIV. Provided always, that in any of the cases herein-before provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions herein-before contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled as against such mortgagee, to possession of the mortgaged lands under the provision herein-before contained.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other

*Rent Charges.*

payment or incumbrance not hereinbefore provided for, be it enacted as follows :

Release of  
lands from  
rent  
charges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act the same shall be determined as in other cases of disputed compensation.

Release of  
part of  
lands from  
charge.

CXVI. If part only of the lands charged with any such rent-service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices ; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands, remaining exclusively subject to the whole thereof.

Deposit in  
case of  
refusal to  
release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge ; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll duly stamped, in the man-

er hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent-service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

**CXVIII.** If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Charge to  
continue  
on lands  
not taken.

*Leases.*

Where part  
only of  
lands under  
lease taken,  
the rent to  
be appor-  
tioned.

And with respect to lands subject to leases, be it enacted as follows :

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands ; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices ; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act ; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease ; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to  
be com-  
pensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensa-  
tion to be  
made to

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if

such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, (a) and for any loss or injury he may sustain, or if a part only of such lands be required compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act. tenants at will, &c.

(a) *Any just allowance which ought to be made to him by the Incoming Tenant.*]—Some cases decided under the Hungerford Market Act may perhaps throw some light upon the construction of these sections. The Hungerford Market Company were empowered to determine tenancies, making compensation to all tenants “who shall be required to quit before the expiration of their term,” and who shall sustain any loss, damage, or injury, in respect of any interest whatever for good will, improvements, tenants’ fixtures, or otherwise, which they now enjoy, by reason of the passing of the act.

A tenant from year to year was ejected by the Company, after receiving a regular half-year’s notice to quit. It appeared that she had been for many years in possession; and that the tenancy was not likely to have been determined if the act had not passed, it was held that she was entitled to compensation for the whole marketable interest which she had in the premises at the time the act passed; and that the good will, though of premises on so uncertain a tenure, was protected by the act as an interest, which would, practically, have been valuable as between the tenant and a purchaser, though it was not a legal interest as against the landlord. *Ex parte Farlow*, 2 B & Ad. 341.

A lessee whose term expired on the day the company came into possession, obtained leave to hold on until the premises were wanted, and did so for a year and three quarters, at the end of which time he quitted, having received half a year’s notice; his under-tenant who came at Christmas two years before, and had

held from year to year, and who knew of the above proceedings, and also received notice to quit, was held entitled to compensation for good will." *Ex parte Hill*, 4 B. & Ad. 592. In another case compensation was claimed by a party who in 1823 became the assignee of a lease for fourteen years, granted in 1818, on premises on the estate purchased by the company. The lease contained covenants to yield up the premises, with all fixtures and improvements, at the end of the term, and not to underlet or assign without leave, but this latter clause had not been introduced in contemplation of any advantage to be taken of it by the landlord with reference to the act: the company suffered the lease to expire, and then turned out the tenant; it was held that he was entitled to have compensation assessed for the loss, if any, sustained by him, in respect of good will on the claim of a beneficial renewal of his lease; but not for fixtures set up or purchased, and for improvements made by him, inasmuch as he had no legal interest in them; it was held nevertheless, that these might be considered by the jury in estimating the claim of a beneficial renewal. *Ex parte Gorling*, 4 B. & Ad. 596, see note, p. 600. Quære, whether the words "any just allowance which ought to be made to him by an incoming tenant" may include "good will?"

Where however, an act required that compensation should be given for "the value of the unexpired term or interest" without any additional words, it was held that a tenant, whose lease had been several times renewed for terms of seven years, and whose landlord at the time of the last renewal, had declined to renew for 14 years, but assured the tenant that he would not be turned out at the end of seven, upon which the tenant laid out money in improvements, (during the seven years the landlord sold his reversion to the company and died, and the company gave notice to quit at the end of the term), had under these circumstances no claim to compensation, *Rex v. Liverpool and Manchester Railway Company*, 4 A. & E. 650.

In order to establish a claim to compensation, a tenant should give up his interest to the company on the day named in the notice, and by holding on with or without their consent, will generally be considered to have waived his claim to compensation. *Reg. v. London and Southampton Railway Company*, 1 Railway Cases, 717; 10 A. & E. 3; 2 P. & D. 343.

The Court has refused to stay proceedings in an action of ejectment until compensation to the tenant should be paid, *ex parte Farlow*, 2 B. & Ad. 341. That it had not been paid however, or the proper steps taken for ascertaining it, would probably be a good defence to the action. *Wainwright v. Ramsden*, 5 M. & W. 602, per Lord Abinger.

With reference to the effect of the notice to quit on the relation of a tenant to his landlord, it has been decided, that where a tenant from year to year, at a rent payable half-yearly, viz., on the first of April and the first of October, received a notice

to quit from a Railway Company, which expired in the middle of the half year, viz., the 28th of July, upon which he quitted, but it did not appear but that he might have held out longer, he was liable for the rent of the half-year ending on the first of October. *Wainwright v. Ramsden*, 5 M. & W. 602; if however he had been compelled by the company to quit on the day named in the notice, it seems the rent would have been apportioned: whether or not so compelled however he might have claimed compensation.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year lease to be produced.

CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special act.

Limit of time for compulsory purchase.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Interests omitted to be purchased.

CXXIV. If at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof

may have  
been  
omitted by  
mistake.

the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon, and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

How value  
of such  
lands to be  
estimated.

CXXV. In estimating the compensation to be given for such last mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works



made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

CXXVI. In addition to the said purchase money, Promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Promoters of the undertaking to pay the costs of litigation as to such lands.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows :

*Sale of superfluous Lands.*  
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CXXVII. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands and apply the purchase money arising from such sales to the purposes of the special act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands not wanted to be sold, or in default to vest in owners of adjoining lands

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed: or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit (a).

(a) The company are not incapacitated from contracting to sell lands although they are incapable of conveying them, before they have offered them to the original owners of them, or to adjoining owners, and the court will decree the specific performance of such an agreement against the party contracting with them. *London and Greenwich Railway Company, v. Goodchild*, 22 Law, J. Ch. 224. 3 Railway cases, 507. (In this case costs were not allowed them.)

Right of pre-emption to be claimed within six weeks.

CXXIX. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering

into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators. Differences as to price to be settled by arbitration.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received. Lands to be conveyed to the purchasers.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special act, the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be Effect of the word "grant," in conveyances.

thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say),

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them :

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any buildings thereon, were valued or rated at the time of the passing of the special act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land tax (a). rate to be made good.

(a) The principle on which railways are rated is a very simple one, the rate being calculated on the amount which it is probable a yearly tenant would pay for the use of the railway, enjoying all the powers and advantages of the company. The following cases will illustrate the application of this principle to circumstances. The London and South Western Railway Company were entitled by their act to charge certain tolls on persons choosing to run carriages, &c., upon it, and also to run carriages themselves, charging certain fares, carriage, &c. In point of fact, however, they were the sole carriers on the line. It was held that they were liable to be rated for their land, thus made additionally valuable by the railway, not merely at the sum a person would give as rent for such tolls as they were empowered to exact, but what he would give as rent for the railway, to be used by him in the same way as the company used it, namely, by running carriages on it on his own account, deducting, of course, tenants' rates, &c., the expense of repairs, and other charges mentioned in stat. 6 & 7 William 4, c. 96, sec. 1, and that they were rateable in each parish, in proportion to the amount of profit derived on that part of the railway within it, and not merely in the ratio of the length of the part within the parish to the whole length of the railway, and this, although the additional value of that part of the line might arise in some measure from the station houses and other works not within the parish. *Rex v. the London and South Western Railway Company*, 1 Q. B. 558. In a subsequent case

it appeared that the Grand Junction Railway Company made their profits partly as carriers, partly by the tolls which they received from other and competing carriers on their line. The sessions rated them on the principle laid down in the above case, ascertaining the rent which a tenant would give for the railway by taking the gross receipts of the railway, and making from them the following deductions :

1. 5 per cent. for interest of capital invested in engines, carriages, and other moveable stock for carrying on their trade as carriers.

2. 20 per cent. for tenants' profits and the profits of trade.

3. 12*l.* 10*s.* per cent. as the fair annual amount of the depreciation of stock, beyond necessary repairs and expenses.

4. The annual expense of conducting the business of carriers, maintenance of railway, repairs of building, insurance, direction, rates, taxes, wages, and other disbursements, as railway owners and carriers.

5. The fair annual value of stations and buildings rated separately from the railway.

6. An annual sum per mile for the renewal and reproduction of rails, chains, sleepers, &c.

Against this mode of rating the company appealed, on the ground that they ought to have been rated only on the amount of tolls which they received from carriers on their line, and the amount of toll chargeable at the same rate on those goods which they carried themselves, from which they contended should have been deducted.

1. 20 per cent. for tenants' subsistence and profits, regard being had to the responsibility, risk, &c.

2. 2*l.* 10*s.* per cent for the collection of the tolls.

3. 350*l.* per mile for the maintenance of the railway, with the works, fences, &c., salaries of engineers, policemen, &c.

4. 70*l.* per mile for poor rates, highway rates, church rates, and tithe commutation rent-charge.

5. 30*l.* per mile for renewing and reproducing rails, &c.

And further contended that if the principle of rating adopted by the sessions should be agreed to, a reduction should be made for good will beyond what the sessions had made.

The Court of Queen's Bench, however, after two arguments, confirmed the order of sessions. *Reg. v. Grand Junction Railway Company*, 4 Railway Cases, 1.

It should be observed that the effect of this decision is that the session made all due deductions in favour of the railway company, but not that all the deductions which they made were necessarily proper ones.

In this case there was no dispute about the apportionment of the poor rate among different parishes, no objection being raised to the arrangement that the rate should be calculated on the whole distance divided by the length of the line in the respondent parishes.

In a late case it appeared that the Great Western Railway Company were owners and occupiers of a railway which they had constructed, and that they were also occupiers of two branch railways, which they rented. They were carriers for hire on the three railways, and used the whole as one concern. The receipts from the branch lines alone, if set against their expenses and rent, would make the occupation of them a losing concern, but such occupation increased the traffic on the main line.

The mode adopted by the parish officers in rating it was as follows:—They took the gross receipts per mile in their own parish. From this they deducted a mileage proportion of the expenses, and of the interest and tenants' profits on the plant of the whole line of railway, and rated the company on the residue.

It was held that among these deductions an allowance should be made in respect of the depression and wear and tear of the rails and sleepers, the solid timber and iron work of the main line, if paid out of the income of the company and charged as an item of annual expenditure before the division of profits, under a section of their act, but not if paid out of their capital; and also for the rateable value of buildings appurtenant to the main line and branches, rated or rateable elsewhere than in the said parish.

But that no allowance should be made for interest on the sum expended in procuring their act, raising their capital, and other original expenses.

Nor for additional parochial assessments, which might have become payable in consequence of the recent decisions of the Court on the subject.

Nor for the actual loss on the branch lines.

Quære, whether a deduction ought not to be made for all or part of the income tax, which by 5 & 6 Vic. c. 35, schedule (A) No. 3 is to be charged in the case of railways, on the profits of the preceding year in respect of the *property* thereof?

The reasonableness of the per centage to be deducted for tenants' profits is a question entirely for the sessions; but when the value of the plant has become diminished, the per centage should be calculated on the present, not the original value. *Reg. v. the Great Western Railway Company*. 4 Railway Cases, 28; 15 L. J., N. S.; M. C. 80.

CXXXIV. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices

Services or notices upon company.

where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Tender of  
amends.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court (*a*).

(*a*) As to what may be a wrongful proceeding *in execution of the act*, see *Smith v. Shaw*, 10 B. & C. 277.

*Recovery of  
Penalties.*

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Penalties  
to be sum-  
marily re-  
covered  
before two  
justices.

CXXXVI. Every penalty or forfeiture imposed by this or the special act, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it



shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Penalties  
to be levied  
by distress.

CXXXVIII. When in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money, shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress  
how to be  
levied.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such

Applica-  
tion of  
penalties.

remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Distress  
against the  
treasurer.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not  
unlawful  
for want of  
form.

CXLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Penalties  
to be sued  
for within  
six months.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless

the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence. Penalty on witnesses making default.

CXLIV. The justices before whom any persons shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this act annexed. Form of conviction.

CXLV. No proceeding in pursuance of this or the special act or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts (a). Proceedings not to be quashed for want of form.

(a) “*No proceedings in pursuance,*” &c.

The writ is inapplicable when there is a total want of jurisdiction, but applies when there has only been an irregularity in the proceedings. Per Patteson, J. *The Queen v. the Sheffield, Ashton-under-line and Manchester Railway Company*, 11 A. & E. 194. In that case it was held that, where a railway act directed that the purchase money of lands taken by the company should be assessed by a jury impannelled by the sheriff or under sheriff, or in case they should be interested, by certain other persons specified therein, to whom a warrant was to be issued by the company, and by whom the jury and witnesses were to be sworn;

and that the verdict and judgment should be deposited with the clerk of the peace and be deemed records to all intents and purposes, and that no proceeding taken in pursuance of the act should be removed by *certiorari*; a *certiorari* would not lie to remove an inquisition, on the ground that it was taken before two persons (namely, an assessor and a clerk of the under-sheriff, by whom the jury and witnesses were sworn) appointed *pro hoc vice* by the sheriff, but not being any of the persons specially named in the act. In a preceding case, where a railway act directed that compensation for lands taken by the company in certain cases should be assessed by a special jury, that the deviation from the line of railway mentioned in the act should not exceed a specified distance, and that no proceedings taken in pursuance of the act should be removed by *certiorari*, a *certiorari* was applied for to remove an inquisition, on affidavits that the jury appeared by the inquisition not to be special, though the case was one in which a special jury was requisite, and that there had been a deviation greater than the act allowed.

The writ was refused, because if the proceedings were in pursuance of the act the *certiorari* was taken away, and if not in pursuance of the act they were merely void. *The Queen v. the Bristol and Exeter Railway Company*, 11 A. & E. 202, & see ante. 222.

Parties allowed to appeal to quarter sessions on giving security.

CXLVI. If any party shall feel aggrieved by any determination, or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

CXLVII. At the quarter sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or

they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs both of the adjudication and of the appeal, as they may think reasonable.

CXLVIII. Provided always, and be it enacted, that notwithstanding any thing herein or in the special act, or any act incorporated therewith contained, every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an act passed in the third year of the reign of her present Majesty, intituled *An act for regulating the Police Courts in the Metropolis*, and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have

Receiver of the metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict. c. 71.

had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last mentioned act.

Persons  
giving false  
evidence  
liable to  
penalties of  
perjury.

CXLIX. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to  
special Act.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows :

Copies of  
special act  
to be kept  
and depo-  
sited, and  
allowed to  
be in-  
spected.

CL. The company shall at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty or some of them ; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act so printed as aforesaid ; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled *An act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.*

7 W. 4, &  
1 Vict. c.  
88.

Penalty on  
company  
failing to  
keep or  
deposit.

CLI. If the company shall fail to keep or deposit as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for



## SCHEDULE (B.)

I                                  of                                  in consideration  
of the rent-charge to be paid to me, my heirs and assigns,  
as herein-after mentioned, by "the promoters of the undertaking"  
*[naming them]*, incorporated *[or constituted]* by virtue of the *[here name the special act]*,  
do hereby convey to the said company *[or other description]*, their successors and assigns,  
all *[describing the premises to be conveyed]*, together with all ways, rights, and appurtenances thereunto belonging,  
and all my estate, right, title, and interest in and to the same and every part thereof,  
to hold the said premises to the said company *[or other description]*, their successors and assigns,  
for ever, according to the true intent and meaning of the said act, they the said company *[or other description]*,  
their successors and assigns, yielding and paying unto me, my heirs and assigns,  
one clear yearly rent of \_\_\_\_\_ by equal quarterly *[or half-yearly, as agreed upon,]* portions,  
henceforth, on the *[stating the days]*, clear of all taxes and deductions.  
In witness whereof I hereunto set my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of our Lord

## SCHEDULE (C.)

### *Form of Conviction.*

to wit

BE it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of our Lord \_\_\_\_\_ A. B.  
is convicted before us C., D., two of her Majesty's  
justices of the peace for the county of \_\_\_\_\_  
[here describe the offence generally, and the time and  
place when and where committed], contrary to the  
[here name the special act]. Given under our hands  
and seals, the day and year first above written.

***C., D.***



# APPENDIX.

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THE object of this Appendix is to explain what conditions a set of persons projecting a railway must comply with, and what steps it may be necessary or prudent for them to take, before obtaining powers from Parliament to carry their scheme into execution. In doing this it is proposed to treat, shortly,

1. Of the registration of railway companies under the Joint Stock Companies' Act.
2. Of their internal regulation before their act of Parliament is obtained.
3. Of those things required to be done by the Standing Orders of the Lords and Commons before the introduction of a railway bill into Parliament.
4. Of the jurisdiction of the Board of Trade over railway companies, and of the practice of the railway department of the Board of Trade, now transferred to the Railway Commissioners.
5. Of the mode of passing a railway bill through Parliament, and of the practice of committees.
6. Of the mode of dissolving railway companies.

## *Of Registration under the Joint Stock Companies' Act.*

The Joint Stock Companies' Act (7 & 8 Vict. c. 110) imposes a penalty on the non-registration of every Joint Stock Company within a month of its conception. The fourth section enacts,

That before proceeding to make public, whether by way of prospectus, handbill, or advertisement, any intention or proposal to form any company for any purpose within the meaning of this act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, it shall be the duty of the promoters of such company and they or some of them are hereby required to make to the office hereby provided for the registration of Joint Stock Companies (and herein-after called the

registry office) returns of the following particulars according to the schedule (C.) hereunto annexed: that is to say,

1. The proposed name of the intended company; and also,
2. The business or purpose of the company; and also,
3. The names of its promoters, together with their respective occupations, places of business (if any), and places of residence; And also the following particulars, either before or after such publication as aforesaid, when and as from time to time they shall be decided on, viz.

4. The name of the street, square, or other place in which the provisional place of business or place of meeting shall be situate, and the number (if any) or other designation of the house or office; and also,

5. The names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business, (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member or promoter whose agreement it purports to be (but such agreements need not be on a stamp); and also,

6. The names of the officers of the company and their respective occupations, places of business (if any), and places of residence; and also,

7. The names of the subscribers to the company, their respective occupations, places of business (if any), and places of residence; and also, before it shall be circulated or issued to the public.

8. A copy of every prospectus or circular, handbill or advertisement, or other such document at any time addressed to the public, or to the subscribers or others, relative to the formation or modification of such company:

9. And afterwards, from time to time, until the complete registration of such company, a return of a copy of every addition to or change made in any of the above particulars:

And that upon such registration of at the least the three particulars first before mentioned the promoters of such company shall be entitled to a certificate of provisional registration.

The 5th section enacts, that if for a period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, the promoters of any company fail to register such particulars, then, on conviction thereof, any promoter as aforesaid shall be liable to forfeit for every such offence a sum not exceeding 20/. (For the forms of these return, see *post*.)

Upon the appointment, however, of a solicitor, the liability to

these penalties is shifted upon him; for this reason therefore, among others, one of the first steps which will probably suggest themselves to the projectors of a company will be to appoint a solicitor. (For the form of appointment and acceptance, duplicates of which must be returned, also of revocation and resignation, see *Addenda*).

Section 7 enacts, that it shall *not be lawful* for any Joint Stock Company for the execution of Parliamentary works or other purposes, to act *otherwise than provisionally* in accordance with this act until such company shall have obtained a certificate of complete registration as hereinafter provided, and proceeds to direct what returns shall be made to the registrar of Joint Stock Companies by all companies except those for executing Parliamentary works, which last are required (section 9) to deposit at the proper offices of the two Houses of Parliament, in compliance with the standing orders of such houses respectively, and at or within the time required by such standing orders, such deeds of partnership or subscription contracts as shall be required to be deposited by such standing orders, and also return to the said registry office a copy of such deeds of partnership or subscription contracts, together with such certificate of the receipt of such plans, sections, and books of reference as shall be appointed by the said committee of privy council for trade, then it shall be lawful for the registrar of Joint Stock Companies, and he is hereby required to accept the same instead of the deed of settlement by this act required to be returned for the purpose of obtaining a certificate of complete registration; and thereupon such company shall be entitled to a certificate of complete registration accordingly.

Sections 10 and 11 enact, that throughout the continuance of any Joint Stock Company completely registered, except such as shall have been *incorporated by Act of Parliament after complete registration*, the directors shall make certain periodical returns, viz., new or supplementary deeds of settlement, or alterations in the schedules after the transfer of shares, and the names and abodes of persons who have become or ceased to be shareholders.

These sections and others leave no doubt that the Legislature intended all companies for the execution of works under the authority of Parliament to be *completely* as well as *provisionally* registered before obtaining the Act of incorporation. It remains to be inquired how the Legislature have enforced their intention, what advantages will be obtained by complying with it, what inconvenience will result from disregarding it.

Section 23 gives the following powers to all companies provisionally registered under the act.

To assume the name of the intended company, but coupled with the words "registered provisionally," and also,

To open subscription lists; and also,

To allot shares, and receive deposit at a rate not exceeding ten shillings for every hundred pounds,

To perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an act of Parliament ;

But not to make calls, nor to purchase, contract for, or hold lands, nor to enter into contracts for any services, or for the execution of any works or the supply of any stores, except such services and stores or other things as are necessarily required for the establishment of the said company, and except any purchase or other contract to be made conditionally on the completion of the company, and to take effect after the certificate of complete registration, act of Parliament, or charter, or letters patent shall have been obtained.

In addition to these powers common to all companies, companies for the execution of Parliamentary works are empowered to receive such deposits or shares as are required by the standing orders, viz., five per cent., and

To contract (unconditionally) for services in making surveys, and performing all other acts necessary for obtaining an act of incorporation or other act for enabling the company to execute such works.

It should be observed, however, that although these last mentioned contracts may be made unconditionally, there is no power given to raise money to pay for them, beyond the deposit of five per cent. per share, required by the standing orders in addition to one-half per cent. allowed by the act, making the maximum 2*l.* 15*s.* on 50*l.*, and that consequently the promoters of the undertaking will incur any expense beyond that at their peril.

The 25th section confers the following powers on all companies, except those for executing Parliamentary works.

1. To use the registered name of the company, adding thereto "registered ;" and also,
2. To have a common seal (with power to break, alter, and change the same from time to time), but on which must be inscribed the name of the company ; and also,
3. To sue and be sued by their registered name in respect of any claim by or upon the company upon or by any person, whether a member of the company or not, so long as any such claim may remain unsatisfied ; and also,
4. To enter into contracts for the execution of the works, and for the supply of the stores, or for any other necessary purpose of the company ; and also,
5. To purchase and hold lands, tenements, and hereditaments in the name of the said company, or of the trustees or trustee thereof, for the purpose of occupying the same as a place or places of business of the said company, and also (but nevertheless with a license, general or special, for that purpose, to be granted by the committee of the Privy

Council for Trade, first had and obtained), such other lands, tenements, and hereditaments as the nature of the business of the company may require; and also,

6. To issue certificates of shares; and also,
7. To receive instalments from subscribers in respect of the amount of any shares not paid up; and also,
8. To borrow or raise money within the limitations prescribed by any special authority; and also,
9. To declare dividends out of the profits of the concern; and also,
10. To hold general meetings periodically, and extraordinary meetings upon being duly summoned for that purpose; and also,
11. To make from time to time, at some general meeting of shareholders specially summoned for that purpose, bye-laws for the regulation of the shareholders, members, directors, and officers of the company, such bye-laws not being repugnant to, or inconsistent with, the provisions of this act, or of the deed of settlement of the company; and also,
12. To perform all other acts necessary for carrying into effect the purposes of such company, and in all respects as other partnerships are entitled to do;

and the said company are hereby empowered and required,—

13. To appoint from time to time, for the conduct and superintendence of the execution of the affairs of the company, a number of directors, not less than three, for a period not greater than five years, with or without eligibility to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye-law; and also,
14. To appoint and remove one or more auditors, and such other officers as the deed of settlement under which the company shall be constituted may authorize:

subject to the provisions of this act, or of the deed of settlement, or other special authority.

A proviso follows, that companies for the execution of Parliamentary works, after complete registration, and before incorporation, shall not exercise the 4th power; viz. to enter upon contracts otherwise than conditionally, upon obtaining such act (except contracts for surveying, &c. which we have before seen, they were empowered to enter upon unconditionally, though not to raise money to pay for them beyond the prescribed amount.)

The 5th power; viz. to purchase or hold lands (leaving their power to do this, as it was before, conditional), or

The 6th power; viz. to receive instalments beyond the necessary amount for obtaining their act; or

The 8th power; viz. to borrow money; or

The 9th power; viz. to declare dividends.

The remainder of the clause, apparently, would express that the 4th power shall not be exercised so generally by Parliamentary

as by other companies, but, nevertheless, sufficiently so to enable them to perform all acts necessary to obtain the powers they require from Parliament. And that, after the act of Parliament shall have been obtained, this act shall no longer apply.

It thus appears that Parliamentary companies acquire greater powers than other companies under provisional registration, and a less accession of powers under complete registration.

The actual increase of power seems to be,

1. To use their registered name.
2. To have a common seal.
3. To sue and be sued in their registered name.
4. To issue certificates of shares.
5. To hold general meetings periodically, and extraordinary meetings upon being duly summoned.
6. To make bye-laws.
7. To appoint directors and auditors.
8. To raise, in addition to 5½ per cent., such sum as may be necessary for the obtaining their act.

Such are the additional powers expressly given to Parliamentary companies by complete registration.

It is important however that attention should be drawn to the next clause (26) which amongst other things enacts,

“With regard to subscribers and every person entitled or claiming to be entitled to any share in *any joint stock company* the formation of which shall be commenced after the 1st day of November, 1844, that until such joint stock company shall have obtained a certificate of complete registration, and until any such subscriber or person shall have been duly registered as a shareholder in the said registry office, it shall not be lawful for such person to dispose by sale or mortgage of such *share or of any interest* therein, and that every contract for, or sale or disposal of such share or interest shall be void, and that every person entering into such contract shall forfeit a sum not exceeding ten pounds; and that for better protecting purchasers it shall be the duty of the directors of the company, by whom certificates of shares are issued, to state on every such certificate the date of the first complete registration of the company as before provided, and that if any such director or officer knowingly make a false statement in that respect, then he shall be liable to the pains and penalties of a misdemeanor.”

A penalty is, by a subsequent section (58), imposed upon all companies existing before the 1st of Nov. 1844, whether incorporated, by act of Parliament, or not, who fail to register. But the act inflicts no penalty on companies not then existing for failing to register *completely*.

The opinions of the profession were for some time divided as to whether the above 26th section extended to Railway Companies, who required the authority of Parliament. It is now decided not to extend to them. *Young v. Smith*, 15 L. J., N. S., Exchequer,

81. *Lawton v. Hickman*, Q. B. 10 Jurist, 543; and therefore shares in such companies may be transferred after provisional, and before complete, registration.



*Of the internal Regulation of a Railway Company up to the obtaining its act of Parliament.*

After a certificate of provisional registration has been obtained, provisional directors and other officers may be appointed, shares, or rather titles to shares on the obtaining of the act, may be allotted, and the general business of the company conducted.

The wording of the prospectus of a Joint Stock Company is often very important, materially affecting the rights and liabilities of those who join the undertaking. The main question which has usually arisen on the construction of prospectuses has been whether the prospectus has announced a partnership already formed or to be formed. As this question however is unlikely to arise with regard to railway prospectuses, which almost necessarily contain the terms of a future partnership, the reader is referred without further observations to the leading case on this subject, *Fox v. Clifton*, 6 Bing. 776: also to *Nockells v. Crosby*, 3 B. & C. 814. *Wood v. the Duke of Argyle*, Law J. 1844 C. P. 96. *Meigh v. Clinton*, 3 Per. & Dav. 211; 11 A. & E. 418. *Bourne v. Freeth*, 9 B. & C. 632; 4 M. & R. 512.

The prospectus, among other matters, usually contains a form of application for shares, to which a letter of allotment is returned in answer, if the applicant be approved of.

The letter of allotment requires to be drawn with some care, not only so as to keep within the law and the statutes which affect companies, but as containing to a certain extent the terms of a contract between the promoters of the company and the subscriber, and determining the amount of interest which the latter obtains in the undertaking.

In this letter it is usual to guard against the subscriber becoming a partner before he shall have executed the subscribers' agreement and Parliamentary contract, and to reserve the power of re-allotting the shares in the event of his neglecting to do so. But it may be doubtful whether this be not introducing a new term into the contract. The intended subscriber applies simply for shares, and undertakes to pay the deposit and to sign the subscribers agreement and Parliamentary contract. This proposal should be accepted in its exact terms, and it would seem that by adding a new stipulation to the effect that unless he performs his agreement, the shares may be declared forfeited, there is not a complete and perfect acceptance, so as to enable the company to sue him for non-performance of such agreement. The

letter of allotment should be in the name of the parties to whom the application is made, *e.g.*, if to the provisional committee it should be in their name, and probably not in the name of the committee of management. See objections in *Woolmer v. Toby. post.* The amount of deposit required is stated, which we have seen cannot legally exceed five and a half per cent. before complete registration, *i. e.*, the half per cent. authorized by the Joint Stock Companies' Act, and five per cent. by the standing orders: (after complete registration so much more may be required as may be necessary for obtaining the act)—a form of receipt for the amount of deposit is usually given, to be signed by the bankers of the company on their behalf, on producing which, after signing the subscribers' agreement and Parliamentary contract, the holder will be entitled to a scrip-certificate. The following are specimens of forms of letters of allotment.



————— *Railway Company.*

Shares: £25.—Deposit £1 15s. per share.—£

Sir,—We have inserted your name as a subscriber for shares in this undertaking, pursuant to your application, and request the payment of the deposit to one of the company's bankers, (*viz.*, Messrs.

On payment thereof the banker will sign the receipt at foot: after which you must produce this letter and the banker's receipt at the offices of Messrs.                      on or before                      the                      instant.

when, on your executing the Parliamentary contract, and subscribers' agreement, which will be found there, the letter and receipt will be marked, and on your presentment of them at the office of the company, after the act of Parliament shall have been obtained, you will be entitled to be registered in the books of the company in respect of the above number of shares.

A printed copy of the Parliamentary contract, and the signatures thereto, must be presented to Parliament immediately after its meeting on                      , and we are therefore compelled to state, that if the deposit be not paid, and the Parliamentary contract signed, on or before the                      instant, the shares will be re-allotted. (*a*)

(*a*) See remarks *ante*.

The solicitors will furnish to any distant subscriber the form of



a power of attorney, authorizing the execution of the Parliamentary contract.

We are, Sir, your obedient servants,

} Members of the  
Committee of  
Management<sup>(a)</sup>.

(a). See remarks *ante*.

1846.

Received of the committee of management of  
railway, the sum of pounds, to  
account for on demand.

Bankers of the Company.

—◆—  
*Another Form.*

———— *Railway Company.*

Provisionally registered pursuant to 7 & 8 Vict. c. 110.  
Capital, £ in shares of £ each. Deposit,  
£ per share.  
No. of letter, No. of shares, Deposit, £  
Offices, London,  
184 .

Sir,  
The Provisional Committee of Directors of company  
having, at your request, allotted you shares in the  
capital stock of the undertaking, I am directed to inform you  
that the deposit of £ per share, amounting to  
must be paid on or before next, the day of  
instant, to the  
or to (or to one of the  
undermentioned bankers) either of whom will give a receipt for  
the same on account of the company.

The receipt will not be transferable, and must be exchanged for  
a certificate of scrip, which will be granted upon the due execu-  
tion of the subscribers' agreement and Parliamentary contract,  
without which no person will be recognised as a subscriber, or  
be entitled to any interest in the undertaking.

I am, sir, &c.

*Secretary.*

Bankers,



liamentary contract and subscribers' agreement, which will be found there, and you will receive scrip certificates for the shares.

You will please to observe that the shares are allotted on the strict condition of your paying the deposit, and executing the deeds within the time limited for that purpose: and in default thereof, the shares will be immediately re-allotted.

Notice of the time at which the deeds will lie for signature in the country, will appear in the local papers; and any parties living at a distance, will be supplied on request with the form of a power of attorney, authorizing the execution of the deeds.

I am, Sir, your obedient servant,  
Secretary.

Bankers—London

Bankers—Country

£

Agents.

Received of the provisional committee of the  
railway the sum of  
to account for on demand.

Signature of bankers.

The letters of allotment having been issued, it becomes desirable, as soon as possible, to collect and organize the company by means of instruments executed by all the subscribers. Parliamentary companies are usually regulated by two deeds, termed the subscribers' agreement, and Parliamentary contract. With reference to the state of things before the execution of these deeds, it is perhaps scarcely necessary to say that the provisional committee, or directors, or those persons whoever they may be, who hold themselves out as managers of the company, employ servants or give orders, will be liable for all disbursements for goods purchased, salaries of officers, &c. unless the parties contracting with them expressly agree not to look to them but to be paid out of some particular fund. *Money Penny v. Hartland*, 1 C. & P. 352. *Kerridge v. Hepe*, 9 C. & P. 200. *Bell v. Francis*, 9 C. & P. 66. As to what amount of interference with the affairs of the company may be sufficient to fix a party as a shareholder who has not signed any deed, see *Harrison v. Heathorn*, 6 Scott's N. R. 735. In that case it appeared that the defendant had attended a special meeting of a company, which had been called by circular at the office of their solicitor. In the minute of the meeting, the names of the several shareholders were inserted, with the number of shares each person held placed opposite his name, and amongst others was the defendant's with one share opposite to it. Important business was transacted at the meeting, that of confirming the sale of one mine, and empowering the directors to sell another, and the providing for the payment of bills, forming the subject of the agreement on which the action was brought. It was proved that the minutes had been read to the assembled shareholders. It was not shewn that the defendant had signed any deed or been

present at a subsequent meeting when the agreement respecting the bills on which the action was brought was entered into by the directors. These circumstances were considered sufficient to fix him as a shareholder. (See also *Steigenberger v. Carr*, 3 M. & G. 191. *Oatey v. Bourne*, *Hawken v. Bourne*, 8 M. & W. 702; 10 Law J., N. S. Exch. 361; *Perring v. Hone*, 4 Bing. 28. *Dickenson v. Valpy*, 10 B. & C. 128.) The latest cases respecting the liability of railway committee-men are *Law v. Wilson*, (June 1846,) before Parke, B. 7 Law Times, 245; *Banks v. Goode*, before Pollock, C. B., 7 Law Times, 286; *Lambert v. Knill* before Wightman, J. *id.* 409; *Webb v. Watts*, before Cresswell, J. *id.*; *Parrett v. Blunt*, *id.* 287; *Bartlett v. Lambert*, 10 Jurist, 416; *Wilson v. Stanhope*, *id.* 421; *Mc Intosh v. The Midland Counties Railway Company*, 5 Law Times, 537; *Lewis v. Billing*, (July, 1846,) 7 Law Times, 337; *Parsons v. Spooner*, 4 Railway Cases, 163; 15 L. J., N.S. Canc. 155; *Sheridan v. Whittington*, 7 Law Times, 433, (Aug. 6, 1846;) and see actions for the recovery of deposits *post*. See as to a shareholder losing his right of interfering with the management of the Company, *Doyle v. Muntz* (July, 1846,) Canc. 7 Law Times, 386.

Persons associating together to procure an act of Parliament enabling them to carry on a certain undertaking are deemed partners, and as such cannot sue each other for work or labour done, or goods supplied for the undertaking. A surveyor or engineer, for example, who holds a share, cannot sue for recompense for his time and trouble, unless some special agreement have been entered into. (*Holmes v. Higgins*, 1 B. & C. 74; 2 D. & R. 196. See *Bovile v. Hammond*, 6 B. & C. 149; *Goddard v. Hodges*, 1 C. & M. 33; 3 Tyr. 209, S. C. *Harvey v. Kay*, 9 B. & C. 356. *Parkyn v. Fry*, 2 C. & P., 311; and *Milburn v. Codd*, 7 B. & C. 419. *Sadler v. Nixon*, 5 B. & Ad. 936; 3 Nev. & M. 258, S. C. *Edger v. Knapp*, 5 M. & G. 753. *Pearson v. Skelton*, 1 M. & W. 504. But see *Brierly v. Cripps*, 7 C. & P. 709; and *Wilson v. Cutting*, 10 Bing. 436.)

Care should be taken not to allot more shares than will be ultimately registered; for, if this be done, the directors will be liable to an action at the suit of the holder of letters of allotment, receipts, or scrip, as the case may be, for not registering him as a shareholder. (*Daly v. Thompson*, 10 M. & W. 309, *ante*.) If the company break up before the execution of the subscribers' agreement or Parliamentary contract, the subscribers may generally recover the amount of deposit paid. (*Nockells v. Crosby*, 3 B. & C. 814. *Kempson v. Saunders*, 4 Bing. 5. *Watkins v. Huntley*, 9 C. & P. note. The late cases on this subject decided in 1846 are *Walstab v. Spottiswoode*, 15 L. J., N.S. Exc. 193. 10 Jurist 460, 498. *Wonter v. Sharp*, (June 1846)—7, Law Times. 287. *Smith v. Newcomb*, Lincoln Ass. coram Patteson, J. 7, Law Times, 370. In these cases, *Nockells v. Crosby*, and *Kempson v. Saunders*, were fully recognized and acted upon.

The subscribers' agreement is a deed which states the object of the association, the amount of the capital, and the number of shares into which it is divided, names the directors or provisional committee, describes the powers entrusted to them, and covenants that the subscribers shall abide by the regulations therein contained. (See form of subscriber's agreement, Addenda.)

The Parliamentary contract, called in the standing orders the subscription contract, is a deed required to be entered into by the standing orders, and is executed by the provisional directors, the trustees, and the shareholders, as three distinct parties; it prescribes the object of the undertaking, covenants for the payment by the parties of the expenses necessary for carrying it on, gives certain discretionary powers to the directors, and usually makes provision for the payment by all subscribers of the expenses incurred, if the application to Parliament should fail. (See form of Parliamentary Contract, Addenda.)

On the execution of the subscribers' agreement and Parliamentary contract, each subscriber has his banker's receipt or letter of allotment stamped, with a certificate to that effect; upon producing which a scrip certificate is given him, which entitles him to be registered as a shareholder of the company after the act of Parliament, or, prior to that act, after a certificate of complete registration has been obtained.

The following is one of the many forms (little differing) of scrip certificates.



————— *Railway Company.*

Provisionally registered pursuant to 7 & 8 Vict. c. 110.  
 Capital, £                      in                      shares of £                      each.  
    Deposit, £                      per share.

No                      to                      inclusive.

This is to certify, that the Subscribers' Agreement, and Parliamentary Contract, having been executed by the person to whom this certificate is issued, for                      shares in the capital stock of the                      railway company, and the deposit of £                      per share having been paid thereon, the shares numbered                      inclusive, have been registered in the share register of the company.

Dated                      1846.

Five shares.

Secretary.

} Directors.

We have seen before (page 7) that this certificate is not, in the strict legal sense, a share, but merely a title to one; the nature of that title, and the question of its transferability have been previously discussed.

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*Of those things which the Standing Orders of both Houses require previously to the introduction of a Railway Bill into Parliament.*

The standing orders of both houses direct that previously to certain bills being brought in, which are divided into three classes, public notice thereof shall be given.

With respect to the second class, which includes bills for making, maintaining, varying, extending, or enlarging any aqueduct, archway, bridge, canal, cut, dock, ferry, harbour, navigation, pier, port, *railway*, reservoir, tunnel, turnpike road, or waterwork, it is ordered, that notices shall be published in three successive weeks in the months of October and November or either of them, immediately preceding the session of Parliament in which application for the bill shall be made, in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands to which such bill relates shall be situate, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; or if such bill do not relate to any particular city, town, or lands, in the *London, Edinburgh, or Dublin Gazette* only, as the case may be.—Lords, S. O., 220, (2).

The Commons' standing order (15) adds, that all notices to be inserted in the *London, Edinburgh, or Dublin Gazette*, be delivered at the office of the *Gazette*, in which the insertion is required to be made, during the usual office hours, at least two clear days previous to the publication of the *Gazette*, and that the receipt of the printer for such notice shall be proof of its due delivery.

The Lords further direct, that all notices (with respect to bills included in the second class of bills hereinbefore mentioned) shall also be given at the general quarter session of the peace which shall have been holden for every and each county, riding, or division in or through which the work shall be made, maintained, varied, extended or enlarged, at Michaelmas or Epiphany preceding the session of Parliament in which such application is intended to be made, by affixing such notice on the door of the session house of each and every such county, riding, or division where such general quarter session shall be holden, save and except as to any bill for such purposes in Scotland; in which case, instead of affixing such notice on the door of the session house, such notices shall be written or printed on paper, and affixed to the church door of the parish or parishes in or through which such work is intended to be made, maintained,

varied, extended, or enlarged for two Sundays in each of the months of October and November immediately preceding the introduction into Parliament of the bill for which such application is intended to be made.—Lords, 223, (2).

*With reference to the contents of such notices,*

it is ordered, that if it be the intention of the parties applying for leave to bring in a bill, to obtain powers for the compulsory purchase of lands or houses, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or any other rights or privileges, the notices shall specify such intention.—Com. 16. Lords, 220, (3).

Both houses direct, that all notices shall contain the names of the parishes, townships, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged, and shall state the time and place of deposit of the plans, sections, and books of reference respectively, with the clerks of the peace, parish clerks, schoolmasters, town clerks, and postmasters, as the case may be.—Com. 22. Lords, 223, (1).

*With regard to the plans, sections, and books of reference.*

Both Houses order, that a plan, and also a duplicate of such plan, on a scale of not less than four inches to a mile, be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division, in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, (a) immediately preceding the session of Parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands respectively; and in the case of bills relating to turnpike roads, cuts, canals, reservoirs, aqueducts, and railways, a section and duplicate thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate.—Com. 23. Lords, 223, (3).

(a) The 30th day of November in 1845 fell on a Sunday, and a question arose whether the necessary documents should not be lodged before twelve o'clock on the Saturday night preceding, but the law officers of the crown gave their opinion that they should be received on

the Sunday, and consequently the offices were kept open for the purpose on that day.

That where it is the intention of the parties to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon, and that in all cases, excepting where the whole of such plan shall be upon a scale of not less than a quarter of an inch to every 100 feet, an additional plan of any building, yard, court-yard, or land within the curtilage of any building, or of any ground cultivated as a garden, either on the original line or included within the limits of the said deviation, shall be laid down on the said plan, or on the additional plan deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet. (*See fig. 3.*)—Com. 24. Lords, 223, (4).

That in all cases where it is proposed to make, vary, extend, or enlarge any railway, the plan shall exhibit thereon the distances in miles and furlongs, from one of the termini; and a memorandum of the radius of every curve not exceeding one mile in length, shall be noted on the plan in miles and chains.—Com. 40, a. Lords, 226, (3).

That the section be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and shall shew the surface of the ground marked on the plan, and the intended level of the proposed work, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof respectively, and shall be referred to some fixed point stated in writing on the section, near either of the termini. (*See line D.D., fig. 2.*)—Com. 25. Lords, 223, (5).

That in every section of a railway, the line marked thereon shall correspond with the upper surface of the rails.—Com. 41. Lords, 226, (4).

That distances on the datum line shall be marked in miles and furlongs, to correspond with those on the plan; that a vertical measure from the datum line to the line of the railway shall be marked in feet and inches at each change of the gradient or inclination: and that the proportion or rate of inclination between each such change shall also be marked.—Com. 41, a. Lords, 226 (5).

That the height of the railway over or under the surface of every turnpike-road, public carriage-road, navigable river, canal, or railway, or junction with a railway, shall be marked in figures at every crossing thereof, and the extreme height over or under the surface of the ground shall be marked for every embankment and cutting: and if any alteration in the present level or rate of inclination of any turnpike-road, carriage-road, or railway be intended, then the same shall be stated on the said section, and each numbered; also that cross sections, in reference to the said



numbers, on a horizontal scale of one inch to every 330 feet, and on a vertical scale of one inch to every forty feet shall be added, to explain the nature of such alterations more clearly. Com. 42. Lords, 226, (6).

That where tunnelling as a substitute for open cutting, or a viaduct as a substitute for solid embankment, be intended, the tunnelling shall be marked by a dotted line on the plan, and shall also be marked on the section, and the viaduct shall be marked on the section. Com. 43. Lords, 226, (7).

Both Houses further order,

That a plan, and also a duplicate of such plan, on a scale of not less than four inches to a mile, be deposited for public inspection at *the office of the clerk of the peace* for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November immediately preceding the session of Parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands respectively; and in the case of bills relating to turnpike-roads, cuts, canals, reservoirs, aqueducts, and railways, a section and duplicate thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate. Com. 23. Lords, 223, (3).

A copy of all plans, sections, and books of reference, required by the orders of the House to be deposited in the office of any clerk of the peace or sheriff clerk on or before the thirtieth day of November immediately preceding the session of Parliament in which application for the bill shall be made, shall on or before the same day be deposited in the office of the railway department of the Board of Trade. Com. 23, a. Lords, 226, (1), now in the office of the Railway Commissioners, 9 and 10 Vic. c. 105, s. 3, *post*.

That on or before the 31st day of December, a copy of so much of the said plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, (*see fig. 5.*) together with a book of reference thereto, be deposited with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk,) and the postmaster of the post-town in or nearest to such parish in Ireland, (*See Addenda, act 1 Vict. c. 83.*)—Com. 27. Lords, 223, (7).

The Lords' order, that copies of so much of the standing orders of this House on private bills as relates to the deposit of

plans, sections, books of reference and other books, and writings, or extracts or copies of or from the same, with the clerks of the peace of counties in England or Ireland, sheriff clerks in Scotland, parish clerks in England, schoolmasters in Scotland, town clerks of royal burghs in Scotland, postmasters in Ireland, and other persons, be delivered to every such clerk of the peace, sheriff clerk, parish clerk, schoolmaster, postmaster, and other person, at the same time with the plan or other writing, or extract, or copy of or from such plan or other writing, deposited with him. 223, (11).

Both Houses order, that the clerks of the peace or their respective deputies, do make a memorial in writing upon the plans, sections, and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and do at all seasonable hours of the day permit any person to view and examine any one of the same, and to make copies or extracts therefrom ; and that one of the two plans and sections so deposited, be sealed up and retained in the possession of the clerk of the peace or sheriff clerk until called for by order of one of the two Houses of Parliament.—(See Addenda, Act 1 Vict. c. 83. Com. 26. Lords, 223, (6).

The Commons' order, (28), that on or before the 31st day of December, a copy of the said plans, sections, and books of reference be deposited in the Private Bill office of this House.

The Lord's order, (223, 8) that on or before the 31st of December, a copy of the said plans, sections and books of reference shall be deposited in the office of the clerk of the Parliament.

*With reference to the estimate and subscription contract.*

Both Houses order that an estimate of the expense be made and signed by the person making the same, and that a subscription be entered into under a contract, made as hereinafter described, to three-fourths the amount of the estimate.—Com. 29. Lords, 224, (1).

That in cases where the work is to be made by means of funds, or out of money to be raised upon the credit of present surplus revenue, under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, a *declaration* stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and given under the common seal of the company, or under the hand of some authorized officer of such directors, trustees, or commissioners, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense.—Com. 30. Lords, 224, (2).

That in cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue to

be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a *declaration* stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense.—Com. 31. Lords, 224, (3).

*With reference to the requisites of the Subscription Contract.*

It is ordered, that every subscription contract contain the Christian and surnames, description and place of abode of every subscriber: his signature to the amount of his subscription, with the amount which he has paid up; and the name of the party witnessing such signature, and the date of the same respectively.—Com. 32. Lords, 224, (4).

*With respect to the time of entering into the Subscription Contract.*

The Lords' order,

That no subscription contract, as respects railway bills, shall be valid unless it be entered into subsequent to the commencement of the session of Parliament previous to that in which application is made for the bill to which it relates.—224, (5).

The Commons' order,

That as regards railway bills, no subscription contract shall be valid, unless it be entered into subsequent to the day fixed in the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, as the last day on which petitions for private bills may be presented, and unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed.—Com. 40.

The Commons further order, (35)

That previous to the presentation of a petition, for a bill, copies of a subscription contract, with names of subscribers arranged in alphabetical order, and the amount of the deposit respectively paid up by each subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration, or of such declaration and estimate, be printed at the expense of the promoters of the bill, and be delivered at the vote office for the use of the members of the House.—Com. 35.

The Lords' order, that copies, &c. be deposited at the office of the clerk of the Parliament previous to the 2nd reading of the bill.

Both Houses order,

That a sum equal to one-twentieth part of the amount subscribed shall be deposited with the Court of Chancery in England, if the work is intended to be done in England; or with the Court of Chancery in England, or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland: and with the Court of Chancery in Ireland, if such work is intended to be done in Ireland. (See *Addenda*.)—Com. 33. Lords, 224, (4).

*With respect to the owners, lessees, and occupiers of land.*

Both Houses order, that on or before the 31st day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought, application in writing (and in cases of bills included, in the second class, in the form as near as may be, set forth in the Appendix to the Standing Orders (marked A), see *Addenda*.) be made to the owners or reputed owners, lessees or reputed lessees and occupiers, either by delivering the same personally, or by leaving the same at their usual place of abode, or in their absence from the United Kingdom with their agents respectively, of which application having been duly made, the production of a written acknowledgment by the party applied to of the receipt of such application, shall be sufficient evidence, in the absence of other proof, of the same having been duly delivered or left as aforesaid; and that separate lists be made of the names of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto.—Com. 17. Lords, 220, (4).

*With reference to Bills for abridging any public Work.*

Both Houses order (in nearly the same words) that before any application is made for a bill whereby any part of a work authorized by any former act is intended to be relinquished, notice in writing of such bill be given to the owners, or reputed owners, lessees, or occupiers of the lands in which the part of the said work intended to be thereby relinquished is situated.—Com. 36. Lords, 223, (12).

The Commons' order,

That all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of the subscription contracts

be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a *declaration* stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense.—Com. 31. Lords, 224, (3).

*With reference to the requisites of the Subscription Contract.*

It is ordered, that every subscription contract contain the Christian and surnames, description and place of abode of every subscriber: his signature to the amount of his subscription, with the amount which he has paid up; and the name of the party witnessing such signature, and the date of the same respectively.—Com. 32. Lords, 224, (4).

*With respect to the time of entering into the Subscription Contract.*

The Lords' order,

That no subscription contract, as respects railway bills, shall be valid unless it be entered into subsequent to the commencement of the session of Parliament previous to that in which application is made for the bill to which it relates.—224, (5).

The Commons' order,

That as regards railway bills, no subscription contract shall be valid, unless it be entered into subsequent to the day fixed in the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, as the last day on which petitions for private bills may be presented, and unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed.—Com. 40.

The Commons further order, (35)

That previous to the presentation of a petition, for a bill, copies of a subscription contract, with names of subscribers arranged in alphabetical order, and the amount of the deposit respectively paid up by each subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration, or of such declaration and estimate, be printed at the expense of the promoters of the bill, and be delivered at the vote office for the use of the members of the House.—Com. 35.

The Lords' order, that copies, &c. be deposited at the office of the clerk of the Parliament previous to the 2nd reading of the bill.

Both Houses order,

That a sum equal to one-twentieth part of the amount subscribed shall be deposited with the Court of Chancery in England, if the work is intended to be done in England; or with the Court of Chancery in England, or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland: and with the Court of Chancery in Ireland, if such work is intended to be done in Ireland. (See *Addenda*.)—Com. 33. Lords, 224, (4).

*With respect to the owners, lessees, and occupiers of land.*

Both Houses order, that on or before the 31st day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought, application in writing (and in cases of bills included, in the second class, in the form as near as may be, set forth in the Appendix to the Standing Orders (marked A), see *Addenda*.) be made to the owners or reputed owners, lessees or reputed lessees and occupiers, either by delivering the same personally, or by leaving the same at their usual place of abode, or in their absence from the United Kingdom with their agents respectively, of which application having been duly made, the production of a written acknowledgment by the party applied to of the receipt of such application, shall be sufficient evidence, in the absence of other proof, of the same having been duly delivered or left as aforesaid; and that separate lists be made of the names of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto.—Com. 17. Lords, 220, (4).

*With reference to Bills for abridging any public Work.*

Both Houses order (in nearly the same words) that before any application is made for a bill whereby any part of a work authorized by any former act is intended to be relinquished, notice in writing of such bill be given to the owners, or reputed owners, lessees, or occupiers of the lands in which the part of the said work intended to be thereby relinquished is situated.—Com. 36. Lords, 223, (12).

The Commons' order,

That all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of the subscription contracts

and declarations required by the standing orders of the House be lodged in the private bill office; and that the receipt thereof be acknowledged accordingly by one of the clerks of the said office, upon the said documents, and upon the petition before it is presented.—Com. 127.

That previous to the presentation of a petition for a bill, copies of the subscription contract, with the names of the subscribers arranged in alphabetical order, the amount of the deposit, respectively paid up by each subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration, or of such declaration and estimate, to be printed at the expense of the promoters of the bill, and delivered at the vote office for the use of members previous to the presentation of the petition.—Com. 35.



## BOARD OF TRADE.

### *Of the Jurisdiction of the Board of Trade over Railways, and of the Constitution and Practice of its Railway Department.*

Having traced the proceedings required by the law, and the standing orders of Parliament, up to the time of application for a bill, this seems the proper place to notice another tribunal which the Legislature had invested with the peculiar care of railroads.

The 1st statute which gave the Board of Trade jurisdiction over railways, was the 3rd and 4th Vict. c. 97, entitled "An Act for regulating Railways," which directed that notice should be given of the opening of a railway to the Board of Trade, and returns made of the aggregate amount of traffic in passengers and goods, and of the tolls and charges levied; and empowered the Board of Trade to appoint inspectors, provided no inspector should have been a director or officer of the company within twelvemonths before his appointment; to allow and disallow bye-laws, (*see Model Code of Bye-laws, sanctioned by the Board of Trade, Addenda.*) to direct prosecutions, and to decide (in lieu of two justices) all disputes concerning the opening of ledges and flanches in railways.

The 5th & 6th Vict. c. 55, entitled "An Act for the better regulation of Railways and conveyance of Troops," (amongst other things) directed that, in addition to the previous notice required of the opening of a railway, notice should be given to the Board of Trade ten days before it should be completed and ready for inspection, and empowered the Board of Trade to postpone such opening if they thought fit. It also directed that

notice of all accidents attended with serious personal injury should be returned to the Board of Trade within forty-eight hours; and empowered them to direct further returns of all serious accidents; to decide certain disputes between connecting railways, to regulate the power of making branch communications with railways, and of entering upon them with locomotive engines, and of extending the compulsory powers of taking land for the purposes of railways, where thought necessary for the public safety. (See this act, Addenda.)

The 7th & 8th Vict. c. 85, (Aug. 9, 1844,) entitled "An Act to attach certain conditions to the construction of future railways authorized or to be authorized by an act of the present or succeeding session of Parliament, and for other purposes in relation to railways," (which among other things authorizes the Treasury to purchase future railways on certain conditions,) gives the Board of Trade power to dispense with certain conditions which it imposes relative to cheap trains, to appoint inspectors who may have been officers of the company within twelve months (s. 15), provided they do not interfere in the affairs of the company. It directs, that if railway companies contravene or exceed the provisions of their act or of any general act, the Board of Trade shall certify the same to the attorney general, who shall proceed against them. It limits the time of prosecutions under the sanction of the Board to one year after the offence, and makes certain provisions relative to communications to and from the Board, service of notices, &c. (See this act, Addenda.)

The select committee on railways which sat in 1844, in their fifth report, after announcing their opinion that the ordinary machinery of private bill committees was insufficient to the due discharge of the accumulating railway business which was coming upon them, and that certain alterations should be made in the constitution of committees, proceeded to observe, that after such alterations there would remain the difficulty of securing permanently the services of the members who would be best qualified for the office of a general supervision of railway proceedings; that there would not be at the command of the House the assistance of officers practically acquainted with the concerns of railways, and the committees must thus be dependent for impartial and responsible testimony upon the extraneous aid of the executive. That if this be so, it would seem to follow that the officers of the executive government ought to give that aid in their capacity as such, and consequently with the sanction, subject to the control, and guaranteed by the responsibility of the heads of their department. After a lengthened discussion on the subject, the report proceeded to recommend that railway bills be submitted to the Board of Trade previously to their coming under the notice of Parliament; the committee conceiving that that Board (or such other public department as may be entrusted with the care of railway matters) might advantageously examine these bills, and also the schemes



themselves before they had assumed the form of bills, with regard mainly to the following subjects.

1. All questions of public safety.
2. All departure from the ordinary usage of railway legislation on points where such usage has been insufficiently established.
3. All provisions of magnitude which may be novel in their principle, or may involve extended considerations of public policy. For example, amalgamation, and agreements between separate companies; extensions of capital; powers enabling the railway companies to pursue purposes different in kind from those for which they were incorporated; modifications of the general law.
4. Branch and extension lines in cases where, upon the first aspect of the plan, a presumption is raised that the object of the scheme is to throw difficulties in the way of new and probably legitimate enterprises.
5. New schemes where the line taken presents a strong appearance of being such as to raise the presumption that it does not afford the best mode of communication between the termini, and of accommodating the local traffic.
6. Cases where a bill of inferior merits may be brought before Parliament, and where a preferable scheme is in *bond fide* contemplation, although not sufficiently forward to come simultaneously under the judgment of Parliament according to its standing orders.
7. Any proposed arrangements with subsisting companies which may appear as objectors to new lines.

The report concluded, "It is the opinion of the committee that such reports should on no account be regarded in any other light than as intended to afford to Parliament: firstly, additional aid in the elucidation of the facts by the testimony of witnesses competent by knowledge, habit and opportunity, and officially responsible; and secondly, recommendations founded upon such elucidation: that their purport should be, not in any case to give the absolute advice that a given railway should be made, but to state whether or not there were public reasons which ought, in the opinion of the department, to be decisive against it, or whether it ought to be postponed until its merits could be examined in connexion with those of some other scheme, or which of two or more contending schemes appeared preferable, in the event that only one should appear likely to receive the sanction of Parliament. And in particular it is the judgment of the committee that no such report should be held to prejudice the claims of private persons, the examination of which should be altogether reserved to the Houses of the Legislature.

The adequate and satisfactory discharge of their duties would entail upon the Board of Trade a great additional amount of

labour and responsibility; and it is the opinion of the committee, that if the recommendations of this and of its other reports should be adopted, it would be necessary to enlarge the railway department of that Board and to improve its organization. Upon these grounds and with these intentions the committee came to the following

*Resolution*—That it is expedient that all railway bills should henceforward be submitted to the Board of Trade previously to their introduction into Parliament; and that the various documents and other requisite information connected with each project, and if necessary, copies of the plans and sections of the line, shall be lodged at the office of the Board of Trade, at such periods as may afford sufficient opportunity for their examination.

These recommendations of the committee, were subsequently embodied in the resolutions of the House.

*Resolved*,—That in the case of railway bills, if any report made under the authority of the Board of Trade upon any bill or the objects thereof be laid before the House, such report shall be referred to the committee on the bill.

“That the 11th section of standing order 87, requiring the committee, in the case of a railway bill, to report specially ‘whether any and what competing lines of railway there are existing, and whether any and what are in progress or contemplation, and to state, so far as circumstances will permit, in what respects the proposed line is superior or inferior to the other lines; but that no line of railway be deemed a competing line in contemplation, unless the plan, section, and book of reference for the same shall have been deposited with the clerks of the peace, and in the Private Bill Office respectively as required by the standing orders’ be repealed.

“That in the case of a railway bill, the committee report specially.

“Whether any report from the Board of Trade in regard to the bill, or the objects thereby proposed to be authorized has been referred to by the House to the committee, and if so, whether any and what recommendations contained in such report have been adopted by the committee, and whether any and what recommendations contained in such report have been rejected; and in case the line or lines be stated in such report to be a competing line or competing lines, the reasons which have induced the committee to recommend the adoption or rejection of such competing lines, or either of them.

“That, in the case of railway bills, a copy of all plans, sections, and books of reference, required by the orders of the House to be deposited in the office of any clerk of the peace or sheriff clerk, on or before the 30th day of November immediately preceding the session of Parliament in which application for the bill shall be made, shall on or before the same day be deposited in the office of the railway department of the Board of Trade.

“That in the case of railway bills, a copy of every bill annexed to a

petition be deposited in the office of the railway department of the Board of Trade, on or before the day of presentation of the petition to the House.

This report and those resolutions gave rise to the Railway department of the Board of Trade.

The "Minute of the Lords of the Committee of Privy Council for Trade" which constituted that department, after reciting the substance of the above report, proceeded—

My Lords are of opinion that they are not competent without the aid of time and experience, to lay down definite and sufficient rules for the future practice of the railway department of this Board; but they have decided upon the following general instructions (subject of course, to reconsideration hereafter, if in any particulars they should be found inapplicable or inconvenient) with respect to—

1. The constitution of a Board for the purpose of transacting railway business.

2. The preparation of minutes and reports.

3. The provisions to be made for obtaining adequate and early information.

1. My Lords are of opinion that for the adequate and satisfactory discharge of the duties, which as is now proposed will devolve upon this committee, it is desirable that a distinct Board should be constituted in the department for the despatch of railway business, and that such business shall be settled by written minutes in the same manner as the ordinary business of this committee.

The president or the vice-president of the committee will act as the head of this Board, and the remaining members of it will act as his advisers in all its transactions, and subject to his controlling authority.

The ordinary members of the Board will be, besides the inspector-general, and in his absence, the assistant inspector, the superintendent and the joint secretaries.

2. Every minute of the Board upon a railway scheme and every report upon a railway bill to have the signatures of,

Firstly, the president or vice-president of this committee; and,

Secondly, three members of the Board, one of whom at least to be an engineering officer of the department.

As respect minutes upon railway schemes, to be made before the bills for giving effect to them are framed, my Lords direct that whenever the department has formed an intention to prepare such a minute, whether upon the application of parties or otherwise, notice shall be given of that intention in the *Gazette*, for the information of those whom it may concern.

My Lords direct that in such notice shall be stated as nearly as may be, the points into which inquiry is to be made in connexion with the proposed line of railway. No such minute,

unless of a preliminary or provisional nature shall be signed until six weeks after such notice. Every such minute shall be published forthwith in the *Gazette*; and every such minute shall be laid on the table of both Houses of Parliament fourteen days after the opening of the session.

Reports to Parliament on railway bills shall be made within fourteen days, if there shall have been previous report on the schemes embodied in them respectively; and at all events within six weeks at the furthest from the receipt of any such bill.

3. As regards the measures to be taken for obtaining early and regular information respecting railway bills and railway projects before they have assumed the form of bills.

Adverting to the resolutions already adopted by the House of Commons on the 19th July, and to those which it is the intention of the vice-president to propose for adoption in the House of Lords, and also to the provisions contained in the Joint-stock Companies' Registration and Regulation Bill, which, if that bill shall become law will ensure the deposit in a public office, under the superintendence of this department, of all documents made public by the promoters of any such joint-stock undertaking as may be formed subsequently to the passing of the act,—my Lords are of opinion that there will be adequate security for their being duly apprised, from time to time, of the origin and progress of future railway projects up to the periods of the presentation of the bills.

To make similar provision for their subsequent stages, before the passing of the acts of incorporation, my Lords will cause to be addressed to all the Parliamentary agents the circular hereto annexed (A).

As regards railway projects already announced to the public during the present year, and now in existence, but not having assumed the form of law, my Lords direct that a list to be prepared of these, and the circular letter (B.) hereto annexed, to be addressed to the solicitors or other leading promoters of them.

(A.)

#### CIRCULAR LETTER TO PARLIAMENTARY AGENTS.

*Railway Department, Board of Trade,  
Whitehall, August, 1844.*

SIR,—Referring to the recommendation of the select committee on railways, that “railway bills be submitted to the Board of Trade, previously to their coming under the notice of Parliament,” with a view to the examination of these bills by the Board, and to the resolution adopted by the House, “that in the case of railway bills, a copy of every bill annexed to a petition be deposited in

the office of the Board of Trade on or before the day of presentation of the petition to the House," I am directed by the Lords of the Committee of Privy Council for Trade to call your attention to the course of proceedings with regard to railway bills entrusted to your charge, which will become necessary in order to give effect to the proposed supervision of the Board of Trade over such bills during their progress through Parliament.

My Lords will be desirous of exercising this supervision with the least possible interference with the ordinary progress of Parliamentary business; and with this view they conceive that the most convenient course will be to require that the information necessary to enable them to form a judgment on the bill at its different stages, should be furnished to them by the agents at the same times as such information is required to be lodged at the Private Bill Office by the standing order of the House.

Accordingly, my Lords think fit to propose, in regard to railway bills—

1. That a copy of such filled-up bill, as proposed to be submitted to the committee, as is deposited, in compliance with the 136th standing order, in the Private Bill Office, at or before the time of giving notice to the committee, be at the same time deposited in the office of the railway department of the Board of Trade.

2. That a printed copy of every bill as amended in committee, except in cases wherein the committee shall report the amendments to be merely verbal or literal, be deposited by the agent for the bill at the office of the railway department of the Board of Trade, three clear days at least before the consideration of the report.

3. That in the case of railway bills, where it is intended to bring up any clause or to propose any amendment in the report or the consideration of the report, or on the third reading of any bill, notice shall be given thereof, and a copy of such clause or amendment deposited in the office of the railway department of the Board of Trade, on the day previous to such report, or consideration of the report, or third reading.

4. That in the case of railway bills, where amendments made by the House of Lords to any bill sent up to them are to be taken into consideration, a copy of the same be deposited by the agent for the bill in the office of the railway department of the Board of Trade, on the day previous to the same being proposed to be taken into consideration.

In fixing the same periods for the deposit of information regarding railway bills in the railway department of the Board of Trade, as is required by the standing orders of the House in regard to the deposit of similar information in the Private Bill Office, my Lords wish, however, to call your attention to the desirableness of furnishing in all cases copies of railway bills and infor-

mation respecting them, at the earliest periods when it may be found practicable.

I am, &c.  
(Signed) S. LAING.

(B.)

### CIRCULAR LETTER TO THE PROMOTERS OF RAILWAY SCHEMES.

*Railway Department, Board of Trade,  
Whitehall, August, 1844.*

SIR,—Referring to the recommendation of the select committee on railways, that a supervision should be exercised by a department of the Government over future railway schemes in their earlier stages, and to the resolutions founded on that recommendation, which have been adopted by the House of Commons, I am directed by the Lords of the Committee of Privy Council for Trade to call your attention to the functions which this department is about to undertake with reference to the railway schemes in which you are understood to be interested, or in which you may hereafter become interested [as solicitor, agent, chairman of company, or otherwise, as the case may be].

It will be their Lordships' wish to discharge these functions so as to incur the smallest possible risk of obstructing the progress of railway bills and undertakings, by the delay necessary for adequate examination; and with this view it is obviously desirable that they should be placed by the promoters of such schemes in possession of the necessary information at the earliest possible period. Accordingly, my Lords request that you will use due diligence in communicating with them from time to time without delay, as occasion may arise, respecting railway schemes in contemplation, in which you may be interested as a promoter, or otherwise; and in due course respecting the detailed nature of such schemes, and the specific legal provisions which it is intended to seek from Parliament.

In conformity with the above minute the railway department of the Board of Trade issued advertisements in the *London Gazette* in the autumn of last year, announcing that they were ready to examine within a specified period, with a view to report upon certain schemes which had then come to their knowledge, and that their inquiries would be principally directed to.

1. The ability and *bond fide* intention of the promoters to prosecute their application to Parliament next session for bills to authorize the several undertakings.
2. The advantages to be obtained, in a national point of view, in completing or extending important lines of railway communication.

3. The amount of local advantage afforded to the towns and districts more immediately affected.
4. The engineering circumstances of the line, so far as to be necessary to form a general judgment of the undertaking.
5. The estimates of cost of construction, and of traffic and working expenses, so far as may be necessary to judge of the probability of the line being completed and efficiently worked in the event of its being sanctioned by Parliament, and with a view of drawing a comparison between the merits of competing lines of railway.

Although it has not been the practice of the Board to put parties to a strict cross-examination, they have elicited from the several engineers, solicitors and agents, to the several schemes in conversation and by questions, as well as by correspondence, such information as they deemed to be essential to a right comprehension of each project.

Six weeks after the advertisement above referred to, the Board published in the *London Gazette* those notices, the effect of which on the railway market is well known, of their intention to report favourably or adversely to those schemes which had been submitted to them.

In order to suit the convenience of the promoters of the various schemes and of the Board of Trade, the standing orders of the House of Commons have been modified during the two last sessions. On the 7th of February, 1845, the House passed the following resolutions :

*Resolved,*

That this House will not receive any petition for any private bill, other than a railway bill, after Friday the 28th day of this instant February.

*Resolved,*

That no private bill, other than a railway bill, be read the first time after Friday the 4th day of April next.

*Resolved,*

That this House will not receive the report of any private bill, other than a railway bill, after Friday the 30th day of May next.

*Resolved,*

That this House will not receive any petition for any railway bill later than the twenty-first day after the day on which the report for the railway department of the Board of Trade, with reference to such railway, has been laid on the table of the House.

*Resolved,*

That no railway bill shall be read the first time later than the twenty-eighth day after the day on which the report from the railway department of the Board of Trade, with reference to such railway, has been laid on the table of the House.

*Resolved,*

That this House will not receive the report of any railway bill later than the eighty-fourth day after the day on which the report

from the railway department of the Board of Trade, with reference to such railway, has been laid on the table of the House.

The effect of these resolutions has been to admit a petition for a railway bill at any time during the session, provided it has been presented within twenty-one days of the report of the Board of Trade being laid upon the table.

It should be stated that railway companies are not obliged to appear before the Board of Trade, or subject themselves to examination by it, although every company applying to Parliament this year has done so; nor is any report necessary to the consideration of their bill. If a scheme be not reported on, however, the petition cannot be presented later than twenty-one days after the first Friday in the session. The Board of Trade is not expressly ordered to make any report, and may omit to do so.

By the resolutions adopted by the House of Commons, Aug. 19, 1846, and the bill introduced into Parliament on the next day, the powers of the Board of Trade, so far as they relate to railways, are to be transferred to a special railway board.

See Post Appendix and Addenda.

By the recent statute 9 and 10 Vict., c. 105 (which received the royal assent on the 28th of August, 1846), all the powers now exercised by, and all proceedings now pending before, the Board of Trade with respect to Railways, are to be transferred to five commissioners of railways, from a certain day to be specified in the "London Gazette." All notices, and other documents hitherto required to be given or sent to the Board of Trade, are henceforth to be sent to the office of the said commissioners. Orders, and other documents proceeding from the said commissioners, and purporting to be sealed with their seal, and to be signed by two or more of them, are to be received as evidence without any further proofs thereof. The commissioners are, by the exercise of the authority hitherto vested in the railway branch of the Board of Trade, to prevent railway companies from exceeding their powers, or otherwise acting contrary to the provisions of the acts under which they are constituted. The commissioners are also to examine and report to her Majesty and both Houses of Parliament upon any subject relating to any railway, or proposed railway, which shall be specially referred to them for their opinion by her Majesty, or by either House of Parliament; and in the case of any application to Parliament for any act for making or maintaining any railway, it is to be a part of their duty, if so directed by her Majesty or either House of Parliament, to inquire and report (on local inspection or otherwise)—

1. Whether there are any competing lines or schemes.
2. Whether by such bill it is proposed to unite with any other railway or canal, or to purchase or lease any railway or other public work.



3. Whether it is proposed to constitute any branch railway or other work in connexion with the proposed railway.
4. Whether the plans, maps, and sections of such proposed railway, which, pursuant to any order of either House of Parliament, shall have been deposited in their office are correct, and, if not, in what particulars incorrect, and whether such errors are material to the objects for which such plans and sections are required.

They are also empowered, for these purposes, to inspect and survey any proposed line of railway, and for this object are invested with the powers given by 4 and 5 Vict. c. 30 (an act to authorise and facilitate the completion of a survey of Great Britain), to persons acting under the orders of the Board of Ordnance. The allowances and payments which by the last-mentioned act are to be paid out of the money granted for the Board of Ordnance, and also all other expenses incurred by the commissioners in making such survey and inspection, are to be paid by the provisional committee, or directors, or promoters of the railway, and shall be deemed a specialty debt due to her Majesty.

See 9 and 10 Vic., c. 105, in the Addenda.

### *Of the introduction of a Bill into Parliament, and the necessary proceedings up to obtaining for it the Royal Assent.*

A Railway Bill must be first introduced into the Commons, being by construction a bill for imposing burthens on the subject, and the power which it usually contains of levying tolls being construed as one to raise money on the subject.

All private bills must be solicited by a Parliamentary agent, and introduced by petition.

In order to become a Parliamentary agent, it is merely necessary, not to be a member of Parliament (resolution 26th February, 1830), and to subscribe a declaration before one of the clerks in the Private Bill Office, engaging to observe and obey all the rules of the House, and to pay all fees and charges when demanded, and if required (which it never is) to enter into a recognizance in 500*l.* conditioned to observe this declaration. Any person who has gone through this form is then registered in a book kept in the Private Bill Office, and becomes entitled to act as a Parliamentary agent.

A Parliamentary agent is personally responsible to the House and to the Speaker for the observance of the rules, orders, and practice of Parliament, and rules prescribed by the Speaker; and for the payment of all fees and charges, and is removeable in case of misconduct, at pleasure of the Speaker, whom, however, he may compel to state in writing, the grounds of his removal. In the event of the agent being superseded, or declining to act, his re-

sponsibility ceases on a notice being given in the Private Bill Office. It is ordered by certain rules laid down by the Speaker by the authority of the House in 1837, that no notice shall be received in the Private Bill Office, for any proceeding upon a petition for a bill, or upon a bill brought from the Lords (after such bill has been read a first time) until an appearance, to act, as the Parliamentary agent upon the same shall have been entered in the Private Bill Office; in which appearance shall also be specified the name of the solicitor (if any) for such petition or bill. Com. S. O. 147, directs that before any party shall be allowed to appear, or be heard upon any petition *against* the bill, an appearance to act as the agent upon it shall be entered in the Private Bill Office, in which appearance shall also be specified the name of the solicitor and the counsel who appear in support of any such petition (if any be then engaged), and a certificate of such appearance shall be delivered to the Parliamentary agent, to be produced to the committee clerk.

All notices required to be given in the Private Bill Office must be delivered in that office before six o'clock in the evening of any day on which the House sits, and before two o'clock on any day on which the House is not sitting; and after any day on which the House shall have adjourned, no notice can be given for the first day on which it shall again sit.

A book is kept in the Private Bill Office, called the "Private Bill Register," in which the names of agents, solicitors, &c. are entered, and also a short summary of the daily proceedings from the petition to the passing of the bill, whether in the House or in committee; the time of the sitting of committees and their adjournment, and the name of the committee clerk; this book is always open to inspection between the hours of eleven and six o'clock.

The requisites of a petition are, that it state shortly the object and purposes of the bill signed by the parties, or some of them, who are suitors for the bill (Com. S. O. 101), that a printed copy of the proposed bill be annexed to it (Com. S. O. 101), that the receipt of all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of subscription contracts, and declarations required by the standing orders at the Private Bill Office be acknowledged upon it.

The petition must be presented by a member of the House who is supposed to take charge of the bill. As to the time when a petition must be presented, see *ante*, p. 30. If it be wished to present a petition after the prescribed time, a petition must be presented, praying for leave to do so, and stating peculiar circumstances; this petition is referred to the committee on standing orders, and if their report be favourable, is received.

If, after a petition has been presented, it should be desired to make additional provisions in the bill, a petition for that purpose

should be presented, with the proposed clauses annexed, in the same manner as the bill was attached to the original petition. Com. S. O. 103.

The petition when presented is referred to the select committee on petitions for private bills.

It here becomes necessary to explain shortly the constitution of the several committees of the House of Commons through which a railway bill has to pass.

The committee on petitions consists of forty-two members, appointed at the commencement of every session, of whom five are a quorum in opposed cases, and three in unopposed (Com. S. O. 1), who divide themselves into sub-committees, consisting of at least seven members. Com. S. O. 2.

Before any of these sub-committees can consider a petition, if it be for an English bill, ten clear days, and if for a Scotch bill, fifteen days must have elapsed after its presentation (Com. S. O. 104), and in both cases ten clear days' notice in writing of the meeting of the sub-committee must be given in the Bill Office by the agent. Com. S. O. 129.

In the case of a petition for additional provision, *one* clear day's notice must be given. S. O. 129.

Before some one of these sub-committees compliance with the standing orders up to the presentation of the petition (which have been before noticed), must be proved. (See the resolution adopted in the House of Commons, August 10th, 1846, to the effect that these proofs shall be taken before an officer appointed by the speaker. *Post* Appendix.)

With respect to Scotch and Irish bills, compliance with the standing orders may be proved by affidavits sworn before any sheriff depute or his substitute in Scotland, and before any judge or assistant barrister in Ireland. S. O. 11. 12.

In the case of an English bill, however, such compliance must be proved by the usual evidence admissible in Courts of Common Law. It should be remarked, however, of Parliamentary committees in general, that they do not apply to the reception or rejection of evidence the same strictness of rule, or uniformity of practice which prevails in Courts of Law.

Any opposing parties may be heard to prove non-compliance with the standing orders, provided they have presented three clear days before the first meeting of the committee, a petition specifically stating the grounds of their complaint. S. O. 9.

If this committee report that the standing orders have been complied with, leave is given to bring in the bill, and some member or members are ordered to "prepare and bring it in."

If the committee decide that the standing orders have not been complied with, they are required to state the facts on which their decision is founded, and any special circumstances connected with the case (S. O. 13); and their report is upon that referred to the committee on standing orders.

This committee is appointed at the beginning of the session, and consists of eleven members, including the chairman of the committee, and of the sub-committees on petitions, of whom five are a quorum (S. O. 3), and it is their office to report to the House their opinion whether compliance with such standing orders as the committee on petition have reported not to have been complied with, should or should not be dispensed with; and whether the parties should be permitted to proceed with their bill, or any portion of it, and under what conditions, if any, S. O. 46.

If the report be that the standing orders should not be dispensed with, for which decision no reason need be given, an appeal still lies to the House; except, however, under very peculiar circumstances, the House will not reverse the decision of the Standing Orders Committee.

If no successful appeal be made to the House, the unfavourable decision of the Standing Orders' Committee is fatal to the bill.

If the report be that the bill should proceed, it is ordered that the report be read, and leave is given to introduce the bill.

On leave being given, the bill may be brought in on the next or any succeeding day: and in some urgent cases on the same day, Votes, 1844, p. 463, 464, and must be presented to the House, printed on paper, of a size to be determined on by the Speaker, with a cover of parchment attached to it, upon which the title of the bill is to be written; and the short title of the bill, as first entered on the votes, must be in accordance with the subject matter of the bill, and may not be changed except by special order of the House. (Com. S. O. 107). The names of the members who obtain leave to bring it in should also be printed on the back of it—so ordered by the House, 26th March, 1838. The proposed amount of all rates, tolls, and other matters, which were formerly allowed to be left blank, are now required to be inserted in *italics* in the printed bill (S. O. 108), and copies must be delivered to the door keepers for the use of members. S. O. 109.

By the Speaker's order, eight copies, also, are to be delivered at the Public Bill Office, when the bill is presented to the House; and afterwards, a copy of an amended breviat of every private bill.

One copy also of every private bill, and two copies of the printed breviat, and two copies of the amended breviat, and amended bill are to be sent to the Private Bill Office for the use of the Board of Trade.

Some day, generally about seven weeks distant, is named at the beginning of the session as the last day on which private bills may be read a first time.

All these regulations having been complied with, the bill may be read a first time.

Before it can be read a second time, three clear days must

elapse (S. O. 110), and three clear days' notice in writing of the day proposed for the second reading is to be given by the agent to the clerks in the Private Bill Office. S. O. 134.

It is further ordered (which seems unnecessary), that the second reading shall not take place until after the expiration of two calendar months from the day the last notice was given in the newspapers (S. O. 112), or until three clear days after the brieve thereof has been laid on the table of the House, and been printed (S. O. 114), or unless the fees are paid.

In the interim between the first and second reading, the bill is examined by the clerk in the Private Bill Office, who specifies upon it any irregularities he may detect, and if it be not drawn in conformity with the rules and orders of the House, or the order of leave, it is withdrawn, and leave is given to present another. 90 Com. J. 411; 92 ib. 254, 425; Votes, 1844, page 640.

By the Speaker's order, (March 24, 1840,) the clerks in the Private Bill Office are particularly directed to take care that in the examination of all private bills, levying any rates, tolls, or duties on the subject, peers of Parliament, peers of Scotland, or peers of Ireland are not to be inserted therein, either as trustees, commissioners, or proprietors of any company.

All the above-mentioned conditions having been complied with, the bill may be read a second time.

After the second reading it is ordered that no petitions complaining solely of non-compliance with the standing orders, be received, unless in the case of those standing orders which must necessarily be taken into consideration by the committee on the bill. S. O. 111.

After the bill has been read a second time, it is committed, and ordinarily referred to the committee of selection, consisting of the chairman of the committee on standing orders, and of the chairmen of the committee and sub-committees on petitions for private bills, of whom three are a quorum (S. O. 4), who refer unopposed bills to the chairman of ways and means, and the members ordered to prepare and bring them in (S. O. 54): and opposed bills to committees made up partly of members on the Speaker's list for the county or division to which each belongs, and partly of such number of other members not locally interested, as they shall think the circumstances require. S. O. 50.

The ordinary machinery, however, of committees has been altered as respects railways during the last three sessions of Parliament, by resolutions superseding for the time being the standing orders. (For the reasons of such alteration, see Report of Select Committee on Railways for 1844).

Opposed and unopposed railway bills are now referred to the same committee, regard being had to their connexion as near, or competing lines, and a new committee has been constituted for the purpose of effecting this arrangement.

It has been a rule to refer to the same committee all railways

having the same terminus—to this rule, however, one exception (at least) has been made in a case where four proposed railways were conterminous—it is presumed on the ground that the examination of four schemes would be too great a task for one committee—this exception, however, has been attended with much inconvenience.

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*The preceding Standing Orders were adopted previous to the Session of 1846.*

It is now proposed to give an abstract of the Standing Orders relative to Railway Bills, as they have been altered during the Session of 1846.

# A B S T R A C T

## OF THE

# COMMONS' STANDING ORDERS

## RELATIVE TO

## Railway Bills.

*Arranged in the order of the Proceedings thereon.*

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The Figures refer to the number of the Standing Order : the Alterations and Additions made during 1846 are printed in the Abstract in Italic type.

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## PRELIMINARY PROCEEDINGS.

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## NOTICES.

WHEN application is intended to be made to Parliament for leave to bring in a bill for making, maintaining, varying, extending, or enlarging any railway, notice thereof to be given. 18.

Except in cases where notices are required to be affixed on church doors, no notice given, nor application *or deposit* made on a Sunday or Christmas-day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon, of any day, will be deemed valid. 42.

**Heading of Notice.**—*The whole of the notice relating to the same bill to be included in the same advertisement, and headed by a short title descriptive of the undertaking.* 20.

**Contents of Notice.**—The notice to contain the names of the parishes, townships, townlands, and extra parochial places, from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged; and state the time and place of deposit of the plans, sections, and books of reference respectively, with the clerks of the peace (sheriff clerks), parish clerks, schoolmasters, town clerks, and clerks of unions, as the case may be. 26.

If it be intended to obtain powers for the compulsory purchase of lands or houses, *or for extending the time granted by any former act for that purpose, or to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company*, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or any other rights or privileges, the notice to specify such intention. 20.

**Publication of Notice.**—The notice to be published in three successive weeks, in the months of October and November, or either of them, immediately preceding the session in which application is intended to be made, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands to which such bill relates shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; and all notices to be inserted in the London, Edinburgh, or Dublin Gazette, are to be delivered at the office of such gazette, during the usual office hours, at least two clear days previous to its publication, and the receipt of the printer for such notice will be proof of its due delivery. 19.

## PLAN, SECTION, AND BOOK OF REFERENCE.

**Manner in which the Plan and Section are to be made.**—The plan to be on a scale of not less than four inches to a mile and describe the line or situation of the whole work (*no alternative line or work being in any case permitted*), and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made. 27.

When powers to make any lateral deviation from the line of the proposed work are intended to be applied for, the limits of such deviation to be defined upon the plan, and all lands included within such limits to be marked thereon, and in all cases, except-

ing where the whole of such plan is upon a scale of not less than a quarter of an inch to every 100 feet, an additional plan of every building, yard, court-yard, or land, within the curtilage of any building, or of any ground cultivated as a garden, either on the original line, or within the limits of the deviation, to be laid down on the plan, or on an additional plan to be deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet. (See Fig. 3.) 29.

The section to be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and show the surface of the ground marked on the plan, the intended level of the proposed work, and a datum horizontal line, which is to be the same throughout the whole length of the work, or any branch thereof respectively, and to be referred to some fixed point stated in writing on the section, near either of the termini. (See line DD. Fig. 2.) 30.

The following particulars must also be attended to in preparing the plan and section :—

The plan to exhibit thereon the distances in miles and furlongs, from one of the termini, and a memorandum of the radius of every curve not exceeding one mile in length, to be noted on the plan in furlongs and chains. 48.

The line of railway marked upon the section to correspond with the upper surface of the rails. 49.

The distances on the datum line to be marked in miles and furlongs, to correspond with those on the plan, and a vertical measure from the datum line to the line of the railway to be marked in feet and inches at each change of the gradient or inclination, and the proportion or rate of inclination between each such change must also be marked. 50.

The height of the railway over or *depth* under the surface of every turnpike-road, public carriage-road, navigable river, canal or railway, or junction with a railway, and the height and span of every arch of all bridges and viaducts *by which the railway shall be carried over the same*, to be marked in figures at every crossing thereof, and the extreme height over or *depth* under the surface of the ground, must be marked for every embankment and cutting *exceeding five feet*; and if any alteration in the present level, or rate of inclination of any turnpike road, carriage-road, or railway be intended, then the same to be stated on the section, and each numbered; also, cross sections, in reference to the said numbers, on a horizontal scale of one inch to every 330 feet, and on a vertical scale of one inch to every 40 feet, to be added, to explain the nature of such alterations more clearly. (See Fig. 4.) 51.

Where tunnelling as a substitute for open cutting, or a viaduct



as a substitute for solid embankment, be intended, the tunnelling to be marked by a dotted line on the plan, and also to be marked on the section, and the viaduct to be marked on the section. 52.

*Contents of Book of Reference.*—The book of reference to contain the names of the owners, or reputed owners, lessees or reputed lessees, and occupiers of the lands in or through which the work is to be made, &c. 27.

*Deposit with Clerks of the Peace.*—Duplicate plans and sections, with a book of reference, to be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, immediately preceding the session in which application for the bill is to be made. 27.

*A published map, to a scale of not less than half an inch to a mile, with the line of railway delineated thereon, so as to show its general course and direction, to be deposited, on or before the 30th day of November, with the clerks of the peace or sheriff clerks, together with the plans and sections.* 54.

The clerks of the peace, or sheriff clerks, or their respective deputies, to mark in writing upon the plans, sections, and books of reference deposited with them, denoting the time at which the same are lodged in their respective offices, and at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections so deposited to be sealed up and retained in the possession of the clerk of the peace or sheriff clerk, until called for by order of one of the two Houses of Parliament. (See Act 1 Vict. c. 83.) 31.

*Deposit at Board of Trade.*—A copy of the plans, sections, and books of reference to be deposited in the office of the railway department of the Board of Trade, on or before the 30th day of November, immediately preceding the session of Parliament in which application is to be made; together with a published map, to a scale of not less than half an inch to a mile, with the line of railway delineated thereon, so as to show its general course and direction. 53. (a)

(a) These documents are now to be deposited in the office of the Railway Commissioners. See *ante*, p. 30.

*Deposit at the Admiralty.*—In cases where the work is situate on tidal lands within the ordinary spring-tides, a copy of the plans and sections to be deposited at the Office of the Board of Admiralty on or before the 30th day of November. 28.

*Deposit with Parish Clerks, &c.*—A copy of so much of the

plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, (see Fig. 5,) with a book of reference thereto, to be deposited, on or before the *thirtieth day of November*, with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk,) and the clerk of the union within which such parish is included in Ireland. 32.

*Deposit in the Private Bill Office.*—A copy of the plans, sections, and books of reference to be deposited in the Private Bill Office on or before the *thirtieth day of November*. 33.

### OWNERS, LESSEES, AND OCCUPIERS.

When any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought, application in writing, in the form set forth in the appendix marked A, to be made to the owners, lessees, and occupiers, on or before the *fifteenth day of December*, which application must be delivered personally or left at their usual place of abode, or in the event of their being absent from the United Kingdom, be left with their respective agents, of which application the production of a written acknowledgment by the party applied to, will in the absence of other proof be sufficient evidence; and separate lists to be made of the names of such owners, lessees, or occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto. 21.

Lists of owners, lessees, and occupiers to be lodged in the Private Bill Office, and the receipt thereof acknowledged on the petition *when deposited*. 139.

Notice, in writing, of a bill whereby any part of a work authorized by any former act is intended to be relinquished, to be given to the owners and occupiers of lands in which the part of the work intended to be thereby relinquished is situate *previous to the deposit of the petition for the bill*. 41.

### ESTIMATE AND SUBSCRIPTION CONTRACT.

An estimate of the expense *of the undertaking under each bill* to be made and signed by the person making the same; and a subscription entered into, under a contract, to three-fourths the amount of *such* estimate. 34.

Every subscription contract to contain the Christian and surnames, description and place of abode of every subscriber; his signature to the amount of his subscription, with the amount which he has paid up, the name of the party witnessing such signature, and the date of the same. 37.

No subscription contract will be valid, unless it be entered into

subsequent to the last day for receiving petitions for private bills in the previous session, and unless the subscribers bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed, *to be recoverable by action at law.* 47.

In cases where the work is to be made *wholly or in part* by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, *such parties being the promoters of the bill*, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, *and showing the actual surplus of such funds and revenue, after deducting the funds which may be required for any other work to be executed under any bill in the same session*, and given under the common seal of the society or company, or under the hand of some authorized officer of such directors, trustees, or commissioners, may be substituted in lieu *or in aid* of the subscription contract, and in addition to the estimate of the expense, *provided such funds shall be equal to the whole amount of the estimate or the portion thereof not provided for by a subscription contract.* 35.

In cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue, to be created by, or to arise under, any bill, under which no private or personal pecuniary profit or advantage is to be derived, a declaration stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense. 36.

Copies of the subscription contract, with the names of the subscribers alphabetically arranged, stating the amount of deposit paid up by each, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration and estimate to be printed at the expense of the promoters of the bill, and delivered at the Vote Office previous to the *deposit* of the petition. 40.

*Previous to the fifteenth day of January* a sum equal to one-tenth part of the amount subscribed to be deposited with the Court of Chancery in England or Ireland, or the Court of Exchequer in Scotland. 46.

## PROVISIONS TO BE INSERTED IN BILLS.

In bills for carrying on any work by means of a company,

commissioners, or trustees, for compelling the subscribers to make payment of the sums severally subscribed by them. 88.

In bills whereby any parties are authorized to levy fees, tolls, or other rate or charge, clauses providing that security be taken from the treasurer and other officers, that full and accurate accounts be kept, that such accounts be duly audited, that all books and vouchers be produced to auditors, that auditors be remunerated, and that a copy of the annual account be transmitted to the clerk of the peace, sheriff clerk, &c. 89.

That no company shall be authorized to raise by loan or mortgage a larger sum than one-third of their capital, and that until fifty per cent. on the whole of the capital has been paid up, it shall not be lawful to raise any money by loan or mortgage. 96.

That where the level of any road shall be altered in making any railway, the ascent of any *public carriage road* shall not be more than one foot in thirty feet; unless a report from some officer of the railway department of the Board of Trade shall be laid before the committee on the bill, recommending that steeper ascents than the above may be allowed, with the reasons and facts upon which such opinion is founded, and the committee shall report in favour of such recommendation: also that a good and sufficient fence, of four feet high at the least, be made on each side of every bridge which shall be erected. 97.

That no railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam engine, shall be made across any turnpike road or other public carriage way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded. 98.

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## PROCEEDINGS IN THE HOUSE.

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### DEPOSIT OF PETITION FOR BILL.

*The petition for the bill headed by a short title descriptive of the undertaking, corresponding with that at the head of the advertisement, with a declaration signed by the agent, and a copy of the bill annexed, to be deposited in the Private Bill Office on or before the thirty-first day of December.* 140.

The declaration of agent to state to which of the three classes of bills such bill belongs, and the objects which the proposed bill will give power to effect, and a copy of such declaration to be deposited at the Board of Trade. 141. Now at the office of the Railway Commissioners, *ante*, p. 30.

*A list of petitions for private bills to be kept in the Private Bill Office, in the order of their deposit according to regulations to be made by the Speaker. 142.*

All plans, sections, books of reference, lists of owners and occupiers, estimates, copies of subscription contracts, and declarations required by the standing orders, to be lodged in the Private Bill Office, and the receipt thereof acknowledged upon the said documents, and upon the petition *when deposited*. 139.

Copies of the subscription contract, with the names of the subscribers arranged in alphabetical order, and the amount of the deposit respectively paid up by each such subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration, or of such declaration and estimate, to be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of members previous to the *deposit* of the petition. 40.

A copy of the bill annexed to the petition to be deposited in the office of the railway department of the Board of Trade, on or before the *thirty-first day of December*. 45.

### EXAMINATION OF PETITION FOR BILL.

*The Speaker to appoint one or more officers to be called "The Examiners of Petitions for Private Bills," and from time to time remove the same, and appoint others in their stead, as he shall see occasion. 1.*

*One of the examiners to be appointed chief examiner. 2.*

*The examination of petitions to commence on the 15th January, in such order and according to such regulations as shall be made by the Speaker, the chief examiner making arrangements for the distribution of the business amongst the examiners. 9.*

*The chief examiner to give seven clear days' notice in the Private Bill Office of the day appointed for the examination of each petition, and if the promoters do not appear at the time when the petition shall come on to be heard, the examiner to strike the petition off the list, and not reinsert the same except by order of the House. 10, 143.*

The compliance with certain standing orders to be proved before one of the *examiners*, and any parties may appear and be heard, by themselves, their agents, and witnesses, upon any *memorial addressed to the examiner*, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in such *memorial*, and that the party affected by the noncompliance with the Standing Orders *have signed such*

*memorial, and that it be deposited in the Private Bill Office three clear days before the day first appointed for the examination of the petition.* 11.

All petitions for additional provision in private bills, with the proposed clauses annexed, to be referred to the *examiner of petitions*. 114.

In the case of an application for a private bill relating to England or Scotland, the *examiner* may admit proof of the compliance with the standing orders which refer to the affixing to the church doors the requisite notices, *and to the applications to owners, lessees, and occupiers*, on the production of affidavits sworn before a *justice of the peace* in England, or before any sheriff depute or his substitute in Scotland, unless the *examiner* shall require further evidence. 12, 13.

In the case of an application for a private bill relating to Ireland, the *examiner* may admit proof of the compliance with the standing orders on the production of affidavits sworn before any judge or assistant barrister in Ireland, unless the *examiner* require further evidence. 14.

*The examiner to certify by endorsement on each petition for a bill whether the standing orders have or have not been complied with, and when they have not been complied with he is to report the facts upon which his decision is founded, and any special circumstances connected with the case.* 15.

*When petitions for additional provisions are referred to the examiner, he is to report to the House whether the standing orders have or have not been complied with, and if not complied with, the grounds of his decision, and any special circumstance connected with the case.* 16.

*In case the examiner shall feel doubts as to the due construction of any standing order in its application to a particular case, he is to make a special report of the facts without deciding whether the standing order has or has not been complied with, and in such case he is to endorse the petition with the words "special report," either alone, or if non-compliances with other standing orders have been proved, in addition to the words "standing orders not complied with."* 17.

## PRESENTATION OF PETITION FOR BILL.

No private bill to be brought in but upon a petition first presented, with a printed copy of the proposed bill annexed, such petition to be signed by some of the parties who are suitors for the bill, *and be duly endorsed by the examiner of petitions for private bills,* 112.

The petition for the bill to be presented to the House *on or before a day to be appointed by the House at the commencement of every session.* 113.

### COMMITTEE ON STANDING ORDERS.

The committee to be *nominated* at the commencement of every session, and to consist of *eleven* members, of whom five are to be a quorum. 3.

All reports of the *examiner* of petitions, to be referred to the committee on standing orders. 115.

The committee on standing orders to report to the House whether such standing orders as have not been complied with ought or ought not to be dispensed with, and whether in their opinion the parties should be permitted to proceed with their bill, or any portion thereof, and under what (if any) conditions. 57.

*When any special report from the examiner of petitions as to the construction of a standing order is referred to the committee on standing orders, they are to determine according to their construction of the standing order, and on the facts stated in such report, whether the standing orders have or have not been complied with, and either report to the House that the standing orders have been complied with, or proceed to consider the question of dispensing with the standing orders, as the case may be.* 58.

Petitions for leave to dispense with any of the sessional orders of the House, *or for the reinsertion of the petition for bill in the examiner's list*, to be referred to the committee on standing orders. 116.

The committee on standing orders to report to the House whether such sessional orders ought or ought not to be dispensed with. 59.

*And also whether the petition for bill ought or ought not to be reinserted in the examiner's list, and if reinserted, under what (if any) conditions.* 60.

When any clause or amendment offered upon the report, or the consideration of the report, or the third reading, is referred to the committee on standing orders, they are to report to the House whether such clause or amendment be of such a nature as not to be adopted by the House without the recommitment of the bill, or of such a nature as to justify the House in entertaining it without recurring to that proceeding, or of such a nature as not in either case to be adopted by the House. 61, 62.

## FIRST READING.

The bill to be printed, and printed copies delivered to the door-keepers for the use of members before the first reading. 119.

A copy of the bill, printed on paper of the size ordered by the Speaker, to be presented to the House, with a cover of parchment, upon which the title of the bill is to be written; and the short title of the bill as first entered on the votes, *must correspond with that at the head of the advertisement*, and not be changed, unless by special order of the House. 117.

The proposed amount of all rates, tolls, and other matters, heretofore left blank in bills when presented to the house, to be inserted in italics in the printed bill. 118.

## SECOND READING.

There are to be three clear days between the first and second reading of the bill. 120.

Three clear days' notice, in writing, of the day proposed for the second reading to be given by the agent for the bill to the clerks in the Private Bill Office. 147.

The bill not to be read a second time until after the expiration of two calendar months from the day the last notice was given in the newspapers, 122; or until three clear days after the breviate thereof has been laid on the table of the house and been printed, 124; or unless fees are paid for the same. 125.

## COMMITTEE OF SELECTION.

*The chairman of the committee on standing orders, and the members of the general committee of elections, to ex officio constitute the committee, of whom three are to be a quorum.* 4.

The bill, after being read a second time and committed, to be referred to the committee of selection. 126.

The committee of selection to refer every private bill referred to them, when it be opposed, to the Speaker's list of that county, or that division of a county, to which the bill specially relates, and to such number of members not locally interested in the bill, as the circumstances of the case shall in their judgment require. 63.

The committee of selection in each case to direct what number of the members (not locally interested in the bill) selected and added to the Speaker's list, by them, are to be a quorum of such members. 64.

The clerk attending the committee of selection to give notice to each selected member of his name having been added to the com-



mittee on the bill, and of the time when such committee has been appointed to meet. 65.

The committee of selection to consider no bill as an opposed private bill where no petition has been presented in which the petitioners pray to be heard, by themselves, their counsel, or agents, unless in cases where the chairman of ways and means shall report to the House that in his opinion the bill should be so treated. 66.

The committee of selection to refer every unopposed bill, to the chairman of the committee of ways and means, together with the members ordered to prepare and bring in the bill. 67.

The committee of selection, subject to the order that there be seven clear days between the second reading of every private bill and the sitting of the committee thereupon, to fix the time for holding the first sitting of the committee on the bill, but in the case of unopposed bills, after communication with the members who are to form the committee on such bill. 68.

### COMMITTEE ON THE BILL.

*Orders specially applying to the proceedings of the Committee on an Opposed Bill.*

The committee on an opposed bill to consist of the members on the Speaker's list of that county, or that division of a county, to which the bill specially relates, and of such number of "selected members" not locally interested in the bill, and in such proportion as the circumstances of each case shall, in the judgment of the committee of selection, require, of which committee five (including the quorum of selected members) are to be a quorum. 5.

Each member of the committee, before he is entitled to attend or vote, to sign a declaration according to the form required by the standing orders. 69, 70, 71.

No member to be entitled to attend or vote who has not delivered his declaration to the clerk previous to the door of the committee room being locked for the appointment of the chairman, and who was not present at such appointment. 72.

So soon after the expiration of ten minutes after the time appointed for the first sitting of the committee as there shall be present at least five members, (including a quorum of selected members,) the clerk to direct the messenger in attendance on the committee to clear the room of all strangers, and to lock the door of the committee-room, and the members then present are to proceed to appoint a chairman. 74.

The member to be appointed the chairman of the committee to be one of the selected members. 75.

Five members (including the quorum of selected members) to be the quorum of the committee, and the committee are not to proceed to business, or continue their inquiry or deliberations, unless such number of members are present. 73.

If at any time a quorum of selected members are not present, the chairman to suspend the proceedings until such quorum shall be present; and if, at the expiration of one hour from the time fixed for the meeting of the committee, or from the time when the chairman shall have suspended the proceedings of the committee, a quorum of the selected members shall not be present, the chairman to adjourn the committee for any period he may think fit, and report to the House the circumstances of the case, at its next meeting. 76.

If at any time after the committee on a bill has been formed, a quorum of members cannot attend, in consequence of any of the members having become incompetent to continue thereon, the chairman to report the circumstances of the case to the House, in order that such measures may be taken by the House as shall enable the members still remaining on the committee to proceed with the business referred to them, or as the exigency of the case may require. 77.

No petition against a bill to be taken into consideration by the committee which does not distinctly specify the grounds of objection to any of the provisions thereof, and the petitioners are to be only heard on such grounds so stated; and if it appears to the committee that such grounds are not specified with sufficient accuracy, they may direct a more specific statement, in writing, to be given in, but limited to such grounds of objection so inaccurately specified. 78.

No petitioners to be heard before the committee, unless the petition has been presented to the House three clear days before the day appointed for the first meeting of the committee, unless the petitioners complain of any matter which has arisen during the progress of the bill before the committee. 79.

*Orders specially applying to the proceedings of the Committee on an Unopposed Bill.*

The committee on an "unopposed bill," to consist of the chairman of the committee of ways and means, together with the members ordered to prepare and bring in the bill; the chairman of the committee of ways and means to be the chairman of the committee; and with one of the other members, to be the quorum thereof. 6, 80.

The chairman, after the bill has been referred to the committee, may report his opinion to the House, that the bill should be

treated as an opposed bill; in which case, such bill to be again referred to the committee of selection, and dealt with by them as an opposed bill. 81.

A filled-up bill, signed by the agent, as proposed to be submitted to the committee, to be laid by him before the chairman at the time of giving notice of the meeting of the committee, and similar copies to be also laid by the agent before the other members of the committee three days before the first meeting thereof. 82.

*Orders applying to the proceedings of the Committee on all Bills, whether the same be Opposed or Unopposed.*

After a committee on a bill has been formed, no members to be added thereto, unless by special order of the House. 8.

There must be seven clear days between the second reading of a bill and the sitting of the committee thereupon. 127.

Subject to the preceding order, the committee of selection to fix the time for holding the first sitting of the committee on the bill. 68.

The clerk to the committee of selection to give notice in writing to the clerks in the Private Bill Office, of the postponement of the first meeting of the committee, on the day on which such postponement is made. 150.

Seven clear days' notice, in writing, to be given by the *clerk to the committee of selection* to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee, and in the case of a re-committed bill, three clear days' notice to be given by the agent for the bill to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee. 148.

A filled-up bill, signed by the agent, as proposed to be submitted to the committee, or in the case of a re-committed bill, as proposed to be submitted to the committee on re-committal, to be deposited in the Private Bill Office one clear day before the meeting of the committee. 149.

If any report made under the authority of the Board of Trade, upon any bill, or the objects thereof, has been laid before the House, such report to be referred to the committee on the bill. 128.

The compliance with the standing orders, in the case of bills relating to Scotland or Ireland, may be proved by the production of affidavits sworn before any sheriff depute or his substitute in Scotland, or before any judge or assistant barrister in Ireland, whose certificate shall be admitted as evidence of such proof having been made, unless the committee shall require further evidence. 85, 86.

In all other instances the committee may admit proof of the consents of parties concerned in interest in any private bill, on the production of certificates, in writing, of such parties, whose signature to such certificates shall be proved by one or more witnesses, unless the committee shall require further evidence. 87.

The committee have no power to examine into the compliance or non-compliance with such standing orders as are directed to be proved before the *examiners of petitions*, unless by special order of the House. 84.

The names of the members attending the committee to be entered by the clerk on the minutes, who is to take down the names of members voting in any division, distinguishing on which side of the question they respectively vote, and give in such lists with the report to the House. 83.

The committee clerk to give notice in writing to the clerks in the Private Bill Office, of the day and hour to which the committee is adjourned. 151.

Every plan and book of reference produced in evidence before the committee, to be signed by the chairman, who is to mark every alteration with his initials, and every such plan and book of reference to be deposited in the Private Bill Office. 91.

Every plan and book of reference to be certified by the Speaker in pursuance of any act of Parliament, must previously be ascertained and verified to be exactly conformable in all respects to those signed by the chairman of the committee. 162.

The chairman to sign a printed copy of the bill, to be called the Committee Bill, on which the amendments are to be fairly written, and mark with his initials the several clauses added in the committee. 92.

The committee to report the bill to the House, whether they have or have not agreed to the preamble, or gone through the several clauses, or any of them. And when any alteration has been made in the preamble of the bill, such alteration, together with the ground of making it, to be specially stated in the report. 94.

If the committee on a railway bill recommend that in the alteration of the level of roads, steeper ascents than are specified in the standing orders be allowed, or that a railway should be made across a road on the level, they are to report the reasons and facts upon which such opinion is founded. 97, 98.

Committees on railway bills to report specially,—1. The proposed capital; 2. Shares subscribed for, and deposits paid thereon; 3. Names, &c. of directors; 4. Shareholders locally interested; 5. Number of other parties; 6. Subscribers for £2,000 and up-

wards; 7. Whether report from Board of Trade has been referred to the committee; 8. Planes to be worked by assistant engines; 9. Engineering difficulties; 10. Size and ventilation of tunnels; 11. Whether the gradients and curves are favourable; 12. Length of main line, and branches, *and on what gauge*; 13. Whether passing highways on the level; 14. Amount of estimates, and whether adequate; 15. Number of assents, dissents, and neuters; 16. Names of engineers examined; 17. Allegations of petitions in opposition; the fitness in an engineering point of view of the projected line, and any other circumstances it is desirable the House should be informed of. 99.

### REPORT.

One clear day's notice in writing of the day on which the bill is to be reported, to be given by the agent for the bill, to the clerks in the Private Bill Office. 152.

The chairman of the Committee to report to the House that the allegations of the bill have been examined, and whether the parties concerned have given their consent, where such consent is required by the standing orders, to the satisfaction of the committee. 93.

The minutes of the committee on the bill to be brought up, and laid on the table of the House, with the report. 95.

The report upon every bill ordered to be printed as amended in committee to lie upon the table. 129.

When it is intended to bring up any clause, or to propose any amendment on the report, notice to be given thereof in the Private Bill Office, on the day previous thereto, 154; and be printed, 133; *and be submitted to the chairman of ways and means, who is to report to the House whether the same ought or ought not to be entertained by the House without referring the same to the committee on standing orders.* 132.

When any clause or amendment offered upon the report, is referred to the committee on standing orders, they are to report whether the proposed clauses or amendments are of such a nature as not to be adopted without the re-commitment of the bill, or of such a nature as to justify the House in entertaining it without recurring to that proceeding, or of such a nature as not in either case to be adopted by the House, 61; and no further proceeding to be had until the report of the said committee has been brought up. 134.

### CONSIDERATION OF REPORT.

One clear day's notice in writing of the day proposed for the consideration of the report, to be given by the agent for the bill to the clerks in the Private Bill Office. 152.

The bill, as amended in committee, except in cases where the committee report the amendments to be merely verbal or literal, to be printed and copies delivered to the doorkeepers for the use of members three clear days, at least, before the consideration of the report. 131.

A breviate of the amendments made in the committee to be submitted to the chairman of the committee of ways and means, and also laid upon the table of the House, at least the day previous to the consideration of the report. 130.

When it is intended to bring up any clause, or to propose any amendment on the consideration of the report, notice to be given thereof in the Private Bill Office on the day previous thereto, 154; and be printed, 133; *and be submitted to the chairman of ways and means, who is to report to the House whether the same ought or ought not to be entertained by the House, without referring the same to the committee on standing orders.* 132.

When any clause or amendment offered upon the consideration of the report is referred to the committee on standing orders, they are to report to the House whether the proposed clauses or amendments are of such a nature as not to be adopted by the House without the recommitment of the bill, or of such a nature as to justify the House in entertaining it without recurring to that proceeding, or of such a nature as not in either case to be adopted by the House, 61; and no further proceeding to be had until the report of the said committee has been brought up. 134.

The reports on railway bills to be considered on Tuesdays *and Thursdays.* 135.

### THIRD READING.

One clear day's notice in writing of the day proposed for the third reading, to be given by the agent for the bill to the clerks in the Private Bill Office, but no such notice to be given until after the bill has been reported, or the report thereof considered. 155.

The bill not to be read a third time until it is certified that the engrossment thereof has been examined, and agrees with the bill as amended in committee, and on the consideration of the report. 158.

When it is intended to bring up any clause, or to propose any amendment on the third reading, notice to be given thereof in the Private Bill Office on the day previous thereto, 154; and be printed, 133; *and be submitted to the chairman of ways and means, who is to report to the House whether the same ought or ought not to be entertained by the House without referring the same to the committee on standing orders.* 132.

When any clause or amendment offered on the third reading is referred to the committee on standing orders, they are to report to the House whether the proposed clause or amendment ought or ought not to be adopted by the House at that stage, 62; and no further proceeding to be had until the report of the said committee has been brought up. 134.

### CONSIDERATION OF LORDS' AMENDMENTS.

When any amendments made by the House of Lords to any bill are to be taken into consideration, notice to be given thereof in the Private Bill Office the day previous thereto. 159.

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On every petition relating to any private bill, the name or short title by which such bill is entered in the votes to be written at the beginning thereof, and whether such petition be in favour or against the bill. 121.

The bill not to pass through two stages on the same day, without the special leave of the House. 136.

Except in cases of urgent and pressing necessity, no motion to be made to dispense with any sessional or standing order, without due notice thereof. 137.

All notices required to be given in the Private Bill Office, to be delivered before six o'clock in the evening of any day on which the House shall sit, and before two o'clock on any day on which the House shall not sit; and after any day on which the House have adjourned *beyond the following day*, no notice to be given for the first day on which it shall again sit. 160.

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A B S T R A C T  
OF THE  
LORDS' STANDING ORDERS  
RELATIVE TO  
**Railway Bills.**

*Arranged in the order of the Proceedings thereon.*

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The Figures refer to the number of the Standing Order, the Section of such Order to which reference is made, and the page at which it will be found: the alterations and additions made during 1846 are printed in the Abstract in Italic type.

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PRELIMINARY PROCEEDINGS.

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NOTICES.

When application is intended to be made to Parliament for leave to bring in a bill for making, maintaining, varying, extending, or enlarging any railway, notice thereof to be given. 220, sect. 1, p. 43.

No notice given or application made on a Sunday or Christmas day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day will be deemed valid (except in cases where notices are required to be affixed to church doors, or where a written acknowledgment is allowed as evidence of such notice or application.) 224, sect. 7, p. 52.

*Contents of Notices.*—The notices to contain a description of all the termini, together with the names of the parishes, townships, townlands, and extra parochial places, from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged; and state the time and place of deposit of the plans, sections, or books of reference respectively, with the clerks of the peace, parish clerks, schoolmasters, town clerks, and clerks of the union, as the case may be. 223, sect. 1, p. 46.



If it be intended to obtain powers for the compulsory purchase of lands or houses, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extirguish any exemptions from payment of tolls, rates, or duties, the notices to specify such intention. 220, sect. 3, p. 44.

*Notices to be inserted in Newspapers.*—The notices to be published in three successive weeks, in the months of October and November, or either of them, immediately preceding the session in which application is intended to be made, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some one and the same newspaper of every county in which the lands to which such bill relates shall be situate: or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto. 220, sect. 2, p. 44.

In the case of bills to empower any company already constituted by act of parliament to execute, *undertake or contribute towards* any work other than that for which it was originally established, the advertisement calling a special meeting of the proprietors of such company, to submit to them a draft of the proposed bill, must be inserted for four consecutive weeks in the newspapers of the county or counties wherein such new works are proposed to be executed. 220, sect. 6, p. 45.

*Notices to be affixed to doors of Sessions Houses, &c.*—The notices to be affixed on the door of the sessions house of each county, riding, or division, through which the work is to be made, maintained, varied, extended, or enlarged, where the general quarter sessions shall be held at Michaelmas or Epiphany preceding the application, except in Scotland, where the notices must be affixed to the church doors of each parish through which the work is to be made, for *three successive Sundays* in the months of October and November, or *either of them*. 223, sect. 2, p. 46.

## PLAN, SECTION, AND BOOK OF REFERENCE.

*Manner in which the Plan and Section are to be made.*—The plan to be on a scale of not less than four inches to a mile, and describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made. 223, sect. 3, p. 47.

When powers to make any lateral deviation from the line of the proposed work is intended to be applied for, the limits of such deviation to be defined upon the plan, and all lands included within such limits to be marked thereon, and in all cases, excepting where the whole of such plan is upon a scale of not less than a quarter of an inch to every 100 feet, an additional plan of every building, yard, court-yard, or land, within the curtilage of any

building, or of any ground cultivated as a garden, either on the original line, or within the limits of the deviation, to be laid down on the plan, or on an additional plan to be deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet.

(See Fig. 3.) 223, sect. 4, p. 47.

The section to be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and show the surface of the ground marked on the plan, the intended level of the proposed work, and a datum horizontal line, which must be the same throughout the whole length of the work, or any branch thereof respectively, and be referred to some fixed point stated in writing on the section, near either of the termini. (See line DD. Fig. 2.) 223, sect. 5, p. 48.

The following particulars must also be attended to in preparing the plan and section:—

The plan to exhibit thereon the distances in miles and furlongs, from one of the termini, and a memorandum of the radius of every curve not exceeding one mile in length, to be noted on the plan in miles, furlongs and chains. 227, sect. 3, p. 54.

The line of railway marked upon the section to correspond with the upper surface of the rails. 227, sect. 4, p. 54.

The distances on the datum line to be marked in miles and furlongs, to correspond with those on the plan, and a vertical measure from the datum line to the line of the railway to be marked in feet and inches at each change of the gradient or inclination, and the proportion or rate of inclination between each such change must also be marked. 227, sect. 5, p. 54.

The height of the railway over or under the surface of every turnpike-road, public carriage-road, navigable river, canal, or railway, or junction with a railway, and the height and span of every arch of all bridges, and viaducts, to be marked in figures at every crossing thereof, and the extreme height, over or under the surface of the ground, to be marked for every embankment and cutting; and if any alteration in the present level, or rate of inclination of any turnpike-road, carriage-road, or railway, be intended, then the same to be stated on the section, and each numbered; also cross sections, in reference to the said numbers, on a horizontal scale of one inch to every 330 feet, and on a vertical scale of one inch to every 40 feet, to be added, to explain the nature of such alterations more clearly. 227, sect. 6, p. 54.

Where tunnelling as a substitute for open cutting, or a viaduct as a substitute for solid embankment, be intended, the tunnelling to be marked by a dotted line on the plan, and also to be marked on the section, and the viaduct to be marked on the section. 227, sect. 7, p. 55.

*Deposit with Clerks of the Peace.*—Duplicate plans and sections, with a book of reference thereto, to be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk, of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, *unless such day shall happen on a Sunday, then on or before the 29th day of November*, immediately preceding the session in which application is to be made. 223, sect. 3, p. 47.

Copies of so much of the Standing Orders of the House of Lords as relate to the deposit of plans, sections, books of reference, &c., with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and clerks of the union, to be delivered to the parties with whom the plans &c. are deposited at the time of such deposit. 223, sect. 11, p. 50.

The clerks of the peace, or sheriff clerks, or their respective deputies, to mark in writing upon the plans, sections, and books of reference deposited with them, denoting the time at which the same are lodged in their respective offices, and at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections deposited to be sealed up and retained in the possession of the clerk of the peace or sheriff clerk, until called for by order of one of the two Houses of Parliament. 223, sect. 6, p. 48.

*Deposit at Board of Trade.*—A copy of the plans, sections, and books of reference, together with a published map to a scale of not less than half an inch to a mile, with the line of railway delineated thereon, so as to show its general course and direction, to be deposited in the office of the railway department of the Board of Trade, on or before the 30th day of November immediately preceding the session of Parliament in which application is to be made. 227, sect. 1, p. 54.

*Deposit with Parish Clerks, &c.*—A copy of so much of the plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, (see Fig. 5,) with a book of reference thereto, to be deposited, on or before the 31st day of December, *or in case such day shall happen on a Sunday, then on or before the 30th day of December*, with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk,) and the clerk of the union within which such parish is included in Ireland. 223, sect. 7, p. 48.

*Deposit in the Parliament Office.*—A copy of the plans, sections, and books of reference to be deposited in the Office of the Clerk

of the Parliaments on or before the 31st day of December, or in case such day shall happen on a Sunday, then on or before the 30th day of December. 223, sect. 5, p. 45.

### OWNERS, LESSEES, AND OCCUPIERS.

When any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought for, application in writing, in the form set forth in the Addenda, marked A, *see post*, to be made to the owners, lessees, and occupiers of such lands, on or before the 31st day of December, which application is to be delivered personally or left at their usual place of abode, or in the event of their being absent from the United Kingdom, be left with their respective agents; and separate lists to be made of the names of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto. 220, sect. 4, p. 44.

Notice, in writing, of a bill whereby any part of a work authorized by any former act is intended to be relinquished, to be given to the owners, lessees, and occupiers of lands in which the part of the work intended to be thereby relinquished is situate. 223, sect. 12, p. 50. *See post* Addenda.

### ESTIMATE AND SUBSCRIPTION CONTRACT.

An estimate of the expense to be made and signed by the person making the same, and a subscription be entered into, under a contract, to three-fourths the amount of the estimate. 224, sect. 1, p. 50.

Subscription contracts to contain the Christian and surname, description and place of abode of every subscriber; his signature to the amount of his subscription, with the amount which he has paid up, the name of the party witnessing each signature, and the date of the same. 224, sect. 4, p. 51.

No subscription contract will be valid, unless it be entered into subsequent to the commencement of the session previous to that in which application is made for the bill, nor unless the subscribers bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed. 224, sect. 5, p. 52.

In cases where the work is to be made by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and given under the common seal of the society or company, or under the hand of some authorized

officer of such directors, trustees, or commissioners, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense. 224, sect. 2, p. 51.

In cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue, to be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a declaration stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense. 224, sect. 3, p. 51.

A sum equal to one-tenth part of the amount subscribed to be deposited with the Court of Chancery in England, if the work is intended to be done in England, or with the Court of Chancery in England, or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland, or with the Court of Chancery in Ireland, if the work is intended to be done in Ireland; the above order, so far as respects the sum of money to be deposited, not to apply to any railway bills which were before Parliament during the last session and which may again be introduced in the next session; but with respect to such bills a sum equal to one-twentieth of the amount subscribed to be deposited as in cases of bills other than railway bills. 224, sect. 4, p. 51.

Copies of the subscription contract, with the names of the subscribers alphabetically arranged, stating the amount of deposit paid up by each, or where a declaration and estimate of rates are substituted in lieu of a subscription contract, copies of such declaration and estimate to be printed at the expense of the promoters of the bill, and delivered at the office of the clerk of the Parliaments previous to the second reading of the bill. 224, sect. 6, p. 52.

### PROVISIONS TO BE INSERTED IN BILLS.

Whenever any sum of money is to be paid for the purchase or exchange of any lands, tenements, or hereditaments, and which money ought to be laid out in the purchase of other lands, tenements, or hereditaments, to be settled to the same uses, provision to be made relative to paying the purchase money into the Bank of England, one of the banks of Scotland established by act of parliament or royal charter, or into the Bank of Ireland, as the case may be. 228, p. 55.

That in case the work intended to be carried into effect under the authority of the bill shall not have been completed so as to answer the objects of such bill, within a time to be limited, all the powers and authorities thereby given shall thenceforth cease and

determine, save only as to so much of such work as shall have been completed within such time, with such provisions and qualifications as the nature of the case shall require. 233, sect. 4, par. 4, p. 61.

Bills for making, maintaining, varying, extending, or enlarging any railway, must also contain the following additional provisions :—

Clause to restrict the company from raising by loan or mortgage a larger sum than one-third of their capital, and to prohibit any money being raised, by loan or mortgage, until fifty per cent. on the whole capital has been paid up. 233, sect. 4, par. 1, p. 61.

Clause to provide that where the level of any road shall be altered in making any railway, the ascent of any turnpike road shall not be more than one foot in thirty feet, and of any other public carriage road not more than one foot in twenty feet, unless a report from some officer of the railway department of the Board of Trade shall be laid before the committee on the bill, recommending that steeper ascents than the above may be allowed, with the reasons and facts upon which such opinion is founded, and the committee shall report in favour of such recommendation: also that a good and sufficient fence, of four feet high at the least, be made on each side of every bridge which shall be erected. 233, sect. 4, par. 2, p. 61.

Clause to prevent a railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam engine, from crossing any turnpike road or other public carriage way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded. 233, sect. 4, par 3, p. 61.

Clauses to prohibit a railway from being proceeded with until plans and sections are deposited with the same parties as the original plans and sections, shewing the alterations therefrom which have been approved of by Parliament, also to limit alterations in the levels of the railway as described on the section approved of by Parliament, to five feet, or in passing through towns, to two feet; and to require tunnels and arches to be made where marked on the plan and section, unless with the consent of the owners, &c. of the lands in, through, or over which such alteration is proposed to be made; also to prohibit any deviation from, or alteration in, the gradients, curves, tunnels, or other engineering works described in the plan and section, except within certain limits and under certain conditions. 233, sect. 5, p. 62.

Clause to enact that the directors appointed by the act shall continue in office until the first ordinary meeting to be held after the passing of the act, and at such meeting the shareholders pre-

sent, personally or by proxy, may either continue in office the directors appointed by the act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the act being eligible as members of such new body. 233, sect. 5, par. 5, p. 64.

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## PROCEEDINGS PREVIOUS TO THE INTRODUCTION OF A BILL INTO THE HOUSE OF LORDS.

Where any alterations have been made, or are desired by the parties to be made, after the introduction of a bill into Parliament, a plan and section of such alterations, on the same scale, and containing the same particulars as the original plan and section, together with a book of reference thereto, to be deposited one month previous to the introduction of the bill into the House, with the clerks of the peace and parish clerks &c. of every county and parish in which such alterations are proposed to be made, and the intention to make such alterations to be advertised in the same manner as notice of the original application, for three successive weeks previously to the introduction of the bill, and personal application, with notice in writing, to be made to the owners, lessees, and occupiers of the lands through which any such alteration is intended to be made, and their consent to the making such alterations must be proved to the satisfaction of the committee before whom the compliance with the standing orders is proved. 223, sect. 9, p. 48.

In the case of bills to empower any company already constituted by act of Parliament to execute any work other than that for which it was originally established, a draft of the proposed bill to be submitted to a meeting of the proprietors of such company, called by advertisement inserted for four consecutive weeks in the newspapers of each county wherein such new works are proposed to be executed, and which meeting must be held not earlier than seven days after the last insertion of such advertisement, and at such meeting the draft of the proposed bill must be approved of by at least three-fifths of the proprietors then present. 220, sect. 6, p. 45.

When any alteration has been made in a bill in its progress through Parliament, a plan and section shewing any variation, extension, or enlargement which is intended to be made in consequence of such alteration, to be deposited in the office of the clerk of the Parliaments previous to the bill being brought from the Commons, such plan and section to be on the same scale, and contain the same particulars as the original plan and section. 223, sect. 10, p. 49.

A copy of the bill, as brought into the House, to be deposited

in the office of the railway department of the Board of Trade. 227, sect. 2, p. 54.

## PROCEEDINGS IN THE HOUSE

### FIRST READING.

*Eight copies of every bill originating in the House of Lords to be delivered at the office of the clerk attending the table of the House upon the first reading of the bill.* 1, p. 65.

### COMMITTEE ON STANDING ORDERS.

The committee to be appointed at the commencement of every session, and to consist of forty lords, besides the chairman of committees, who is to be always chairman of such committee. 219, sect. 2, p. 41.

Three lords, including the chairman, to be a quorum. 219, sect. 3, p. 41.

Three clear days' notice to be given of the meeting of the committee. 219, sect. 7, p. 42.

Previous to the second reading of any railway bill, such bill to be referred to the standing order committee, before which the compliance with the standing orders must be proved. 219, sect. 4, p. 41.

Any parties may appear and be heard by themselves, their agents and witnesses, upon any petition which may be referred to the committee, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in the petition, and that it be presented on or before the second day after the introduction of the bill. 219, sect. 5, p. 41.

*Any petition intended for presentation by the chairman of committees must have an endorsement stating certain particulars, and be left with Mr. Adam before three o'clock on the day on which it is intended to be presented.* 2, p. 65.

Any proprietor of a company already constituted by act of parliament, applying for power to execute, undertake, or contribute towards any work other than that for which it was originally established, and who dissented at the meeting of proprietors to whom the draft of the proposed bill was submitted, may, on petitioning the House, be heard by himself, his counsel, or agents, and witnesses. 234, sect. 2, p. 64.



*The service of applications to owners, lessees, and occupiers of lands may be proved before the committee by the evidence of the agent or solicitor, unless a petition complaining of the want of due service of such application shall have been referred to the committee.* 220, sect. 5, p. 44.

The committee to require proof that all persons whose names are introduced in the bill as manager, director, proprietor, or otherwise concerned in carrying the bill into effect, have subscribed their names to the petition for the bill, or to a printed copy of the bill. 225, p. 52.

The committee to report whether the standing orders have been complied with, and if not complied with, to state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case. 219, sect. 6, p. 41.

## SECOND READING.

Previous to the second reading of a bill, copies of the subscription contract, with the names of the subscribers alphabetically arranged, and the amount of deposit respectively paid up by each such subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration and estimate to be printed at the expense of the promoters of the bill, and be delivered at the office of the clerk of the Parliament. 224, sect. 6, p. 52.

*When the agent for the bill gives notice of the second reading, he is to give in to Mr. Adam a written statement as to whether the railway is a competing line, or is opposed, &c.* 4, p. 66.

*Petitions praying to be heard upon the merits against any second class railway bill must be presented on or before the day on which such bill is read a second time.* 219, sect. 21, p. 43.

## COMMITTEE ON THE BILL.

No opposed bill to be referred to an open committee. 219, sect. 9, p. 42.

Every opposed bill to be referred to a select committee of five, who are to choose their own chairman. 219, sect. 10, p. 42.

The chairman of committees and four other lords to be named by the House, to select and propose to the House the names of the five lords to form the committee on each opposed bill. 219, sect. 15, p. 42.

The committee of five not to be named to the House on the same day on which the bill is read a second time. 219, sect. 16, p. 42.

Lords to be exempted from serving on the committee on any bill wherein they have any interest. 219, sect. 13, p. 42.

Lords to be excused from serving for any special reasons to be approved of in each case, by the House. 219, sect. 14, p. 42.

The committee to meet not later than eleven o'clock every morning, and sit till four, and not to adjourn at an earlier hour, without specially reporting the cause of such adjournment to the House at its next meeting, nor adjourn over any days except Saturday and Sunday, Christmas Day and Good Friday, without leave of the House. 219, sect. 17, p. 42.

Every one of such committee of five to attend the proceedings of the committee during the whole continuance thereof. 219, sect. 11, p. 42.

If any member of the committee is prevented from continuing his attendance, the committee to adjourn, and report the cause thereof to the House at its next meeting, and not to resume its sittings without leave of the House. 219, sect. 18, p. 42.

No lord who is not one of the five to take any part of the proceedings of the committee. 219, sect. 12, p. 42.

The committee on railway and opposed bills not to examine into the compliance with the standing orders, the compliance with which is required to be proved before the standing order committee. 219, sect. 8, p. 42.

*Parties proposing to appear before the committee upon any petition referred to the committee must previously enter an appearance, by themselves or their agents, in the book kept in the committee clerk's office for that purpose.* 3, p. 66.

Any proprietor of a company already constituted by act of parliament applying for power to execute, *undertake, or contribute towards* any work other than that for which it was originally established, and who dissented at the meeting of proprietors to whom the draft of the proposed bill was submitted, may, on petitioning the House, be heard, by himself, his counsel or agents, and witnesses. 234, sect. 2, p. 64.

If any report, made under the authority of the Board of Trade, upon any railway bill, or the objects thereof, be laid before the House, such report to be referred to the committee on the bill. 219, sect. 20, p. 43.

If the committee on a railway bill recommend that in the alteration of the level of roads, steeper ascents than are specified in the standing orders be allowed, or that a railway should be made across a road on the level, they are to report the reasons and facts upon which such opinion is founded. 233, sect. 4, pars. 2 and 3, p. 61.

Committees on railway bills to inquire into the following matters, and report specially thereupon:—1. The proposed capital; shares subscribed for, and deposits paid thereon; names, &c. of directors,; shareholders locally interested; number of other parties; subscribers for 2000*l.* and upwards; 2. Whether railway be a complete line, or part of a more extended plan; 3. Whether any report from Board of Trade has been referred to the committee; 4. Planes to be worked by assistant engines; 5. Engineering difficulties; 6. Size and means of ventilation of tunnels; 7. Whether the gradients and curves are favourable; 8. Length of main line, and of the branches; 9. Fitness in an engineering point of view; 10. If any highways to be passed on a level; 11. Amount of estimates, and whether adequate; 12. Estimated annual expenses; 13. Revenue in reference to annual charge; 14. Number of assents, dissents, and neuters; 15. Names of engineers examined; 16. Allegations of petitions in opposition; 17. And any other circumstance it is desirable the House should be informed of. 233, sect. 1, p. 59.

In cases where there is no opposition, or no parties appear in support of a petition in opposition to a railway bill, the committee are to determine how far it may be necessary to inquire into such particulars. 233, sect. 3, p. 61.

### FURTHER CONSIDERATION OF REPORT.

When railway bills have been opposed in the committee on the bill, the further consideration of the report will not be proceeded with until the House has received from the committee specific replies in answer to each of the questions on which they are directed specially to report. 233, sect. 2, p. 61.

### THIRD READING.

Railway bills, which have been opposed, and in which any amendments have been made in the committee, must be reprinted as amended previously to the third reading, unless the chairman of the committee shall certify that the reprinting of such bill is unnecessary. 234, sect. 1, p. 64.

*Three days* before the bill is read a third time, a copy as amended in the committee to be deposited at the Board of Trade. 234, sect. 4. p. 65.

No railway bill to be read a third time unless provision be therein restricting the company from raising by loan or more a larger sum than one-third of their capital; limiting the alteration of the level of turnpike roads to one in thirty, and of other roads to one in twenty, and prohibiting the railway from crossing ways on same level, unless the committee on the bill report such restrictions ought not to be enforced; and limiting the time for the completion of the work. 233, sect. 4, p. 61.

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building, or of any ground cultivated as a garden, either on the original line, or within the limits of the deviation, to be laid down on the plan, or on an additional plan to be deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet.

(See Fig. 3.) 223, sect. 4, p. 47.

The section to be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and show the surface of the ground marked on the plan, the intended level of the proposed work, and a datum horizontal line, which must be the same throughout the whole length of the work, or any branch thereof respectively, and be referred to some fixed point stated in writing on the section, near either of the termini. (See line DD. Fig. 2.) 223, sect. 5, p. 48.

The following particulars must also be attended to in preparing the plan and section :—

The plan to exhibit thereon the distances in miles and furlongs, from one of the termini, and a memorandum of the radius of every curve not exceeding one mile in length, to be noted on the plan in miles, furlongs and chains. 227, sect. 3, p. 54.

The line of railway marked upon the section to correspond with the upper surface of the rails. 227, sect. 4, p. 54.

The distances on the datum line to be marked in miles and furlongs, to correspond with those on the plan, and a vertical measure from the datum line to the line of the railway to be marked in feet and inches at each change of the gradient or inclination, and the proportion or rate of inclination between each such change must also be marked. 227, sect. 5, p. 54.

The height of the railway over or under the surface of every turnpike-road, public carriage-road, navigable river, canal, or railway, or junction with a railway, and the height and span of every arch of all bridges, and viaducts, to be marked in figures at every crossing thereof, and the extreme height, over or under the surface of the ground, to be marked for every embankment and cutting; and if any alteration in the present level, or rate of inclination of any turnpike-road, carriage-road, or railway, be intended, then the same to be stated on the section, and each numbered; also cross sections, in reference to the said numbers, on a horizontal scale of one inch to every 330 feet, and on a vertical scale of one inch to every 40 feet, to be added, to explain the nature of such alterations more clearly. 227, sect. 6, p. 54.

Where tunnelling as a substitute for open cutting, or a viaduct as a substitute for solid embankment, be intended, the tunnelling to be marked by a dotted line on the plan, and also to be marked on the section, and the viaduct to be marked on the section. 227, sect. 7, p. 55.

*Deposit with Clerks of the Peace.*—Duplicate plans and sections, with a book of reference thereto, to be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk, of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, *unless such day shall happen on a Sunday, then on or before the 29th day of November*, immediately preceding the session in which application is to be made. 223, sect. 3, p. 47.

Copies of so much of the Standing Orders of the House of Lords as relate to the deposit of plans, sections, books of reference, &c., with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and clerks of the union, to be delivered to the parties with whom the plans &c. are deposited at the time of such deposit. 223, sect. 11, p. 50.

The clerks of the peace, or sheriff clerks, or their respective deputies, to mark in writing upon the plans, sections, and books of reference deposited with them, denoting the time at which the same are lodged in their respective offices, and at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections deposited to be sealed up and retained in the possession of the clerk of the peace or sheriff clerk, until called for by order of one of the two Houses of Parliament. 223, sect. 6, p. 48.

*Deposit at Board of Trade.*—A copy of the plans, sections, and books of reference, together with a published map to a scale of not less than half an inch to a mile, with the line of railway delineated thereon, so as to show its general course and direction, to be deposited in the office of the railway department of the Board of Trade, on or before the 30th day of November immediately preceding the session of Parliament in which application is to be made. 227, sect. 1, p. 54.

*Deposit with Parish Clerks, &c.*—A copy of so much of the plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, (see Fig. 5,) with a book of reference thereto, to be deposited, on or before the 31st day of December, *or in case such day shall happen on a Sunday, then on or before the 30th day of December*, with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk,) and the clerk of the union within which such parish is included in Ireland. 223, sect. 7, p. 48.

*Deposit in the Parliament Office.*—A copy of the plans, sections, and books of reference to be deposited in the Office of the Clerk

of the Parliaments on or before the 31st day of December, *or in case such day shall happen on a Sunday, then on or before the 30th day of December.* 223, sect. 8, p. 48.

### OWNERS, LESSEES, AND OCCUPIERS.

When any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought for, application in writing, in the form set forth in the Addenda, marked A, (see *post*), to be made to the owners, lessees, and occupiers of such lands, on or before the 31st day of December, which application is to be delivered personally or left at their usual place of abode, or in the event of their being absent from the United Kingdom, be left with their respective agents; and separate lists to be made of the names of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto. 220, sect. 4, p. 44.

Notice, in writing, of a bill whereby any part of a work authorized by any former act is intended to be relinquished, to be given to the owners, lessees, and occupiers of lands in which the part of the work intended to be thereby relinquished is situate. 223, sect. 12, p. 50. See *post* Addenda.

### ESTIMATE AND SUBSCRIPTION CONTRACT.

An estimate of the expense to be made and signed by the person making the same, and a subscription be entered into, under a contract, to three-fourths the amount of the estimate. 224, sect. 1, p. 50.

Subscription contracts to contain the Christian and surname, description and place of abode of every subscriber; his signature to the amount of his subscription, with the amount which he has paid up, the name of the party witnessing each signature, and the date of the same. 224, sect. 4, p. 51.

No subscription contract will be valid, unless it be entered into subsequent to the commencement of the session previous to that in which application is made for the bill, nor unless the subscribers bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed. 224, sect. 5, p. 52.

In cases where the work is to be made by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and given under the common seal of the society or company, or under the hand of some authorized



officer of such directors, trustees, or commissioners, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense. 224, sect. 2, p. 51.

In cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue, to be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a declaration stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense. 224, sect. 3, p. 51.

A sum equal to one-tenth part of the amount subscribed to be deposited with the Court of Chancery in England, if the work is intended to be done in England, or with the Court of Chancery in England, or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland, or with the Court of Chancery in Ireland, if the work is intended to be done in Ireland; the above order, so far as respects the sum of money to be deposited, not to apply to any railway bills which were before Parliament during the last session and which may again be introduced in the next session; but with respect to such bills a sum equal to one-twentieth of the amount subscribed to be deposited as in cases of bills other than railway bills. 224, sect. 4, p. 51.

Copies of the subscription contract, with the names of the subscribers alphabetically arranged, stating the amount of deposit paid up by each, or where a declaration and estimate of rates are substituted in lieu of a subscription contract, copies of such declaration and estimate to be printed at the expense of the promoters of the bill, and delivered at the office of the clerk of the Parliaments previous to the second reading of the bill. 224, sect. 6, p. 52.

### PROVISIONS TO BE INSERTED IN BILLS.

Whenever any sum of money is to be paid for the purchase or exchange of any lands, tenements, or hereditaments, and which money ought to be laid out in the purchase of other lands, tenements, or hereditaments, to be settled to the same uses, provision to be made relative to paying the purchase money into the Bank of England, one of the banks of Scotland established by act of parliament or royal charter, or into the Bank of Ireland, as the case may be. 228, p. 55.

That in case the work intended to be carried into effect under the authority of the bill shall not have been completed so as to answer the objects of such bill, within a time to be limited, all the powers and authorities thereby given shall thenceforth cease and

determine, save only as to so much of such work as shall have been completed within such time, with such provisions and qualifications as the nature of the case shall require. 233, sect. 4, par. 4, p. 61.

Bills for making, maintaining, varying, extending, or enlarging any railway, must also contain the following additional provisions :—

Clause to restrict the company from raising by loan or mortgage a larger sum than one-third of their capital, and to prohibit any money being raised, by loan or mortgage, until fifty per cent. on the whole capital has been paid up. 233, sect. 4, par. 1, p. 61.

Clause to provide that where the level of any road shall be altered in making any railway, the ascent of any turnpike road shall not be more than one foot in thirty feet, and of any other public carriage road not more than one foot in twenty feet, unless a report from some officer of the railway department of the Board of Trade shall be laid before the committee on the bill, recommending that steeper ascents than the above may be allowed, with the reasons and facts upon which such opinion is founded, and the committee shall report in favour of such recommendation: also that a good and sufficient fence, of four feet high at the least, be made on each side of every bridge which shall be erected. 233, sect. 4, par. 2, p. 61.

Clause to prevent a railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam engine, from crossing any turnpike road or other public carriage way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded. 233, sect. 4, par 3, p. 61.

Clauses to prohibit a railway from being proceeded with until plans and sections are deposited with the same parties as the original plans and sections, shewing the alterations therefrom which have been approved of by Parliament, also to limit alterations in the levels of the railway as described on the section approved of by Parliament, to five feet, or in passing through towns, to two feet; and to require tunnels and arches to be made where marked on the plan and section, unless with the consent of the owners, &c. of the lands in, through, or over which such alteration is proposed to be made; also to prohibit any deviation from, or alteration in, the gradients, curves, tunnels, or other engineering works described in the plan and section, except within certain limits and under certain conditions. 233, sect. 5, p. 62.

Clause to enact that the directors appointed by the act shall continue in office until the first ordinary meeting to be held after the passing of the act, and at such meeting the shareholders pre-

sent, personally or by proxy, may either continue in office the directors appointed by the act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the act being eligible as members of such new body. 233, sect. 5, par. 5, p. 64.

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## PROCEEDINGS PREVIOUS TO THE INTRODUCTION OF A BILL INTO THE HOUSE OF LORDS.

Where any alterations have been made, or are desired by the parties to be made, after the introduction of a bill into Parliament, a plan and section of such alterations, on the same scale, and containing the same particulars as the original plan and section, together with a book of reference thereto, to be deposited one month previous to the introduction of the bill into the House, with the clerks of the peace and parish clerks &c. of every county and parish in which such alterations are proposed to be made, and the intention to make such alterations to be advertised in the same manner as notice of the original application, for three successive weeks previously to the introduction of the bill, and personal application, with notice in writing, to be made to the owners, lessees, and occupiers of the lands through which any such alteration is intended to be made, and their consent to the making such alterations must be proved to the satisfaction of the committee before whom the compliance with the standing orders is proved. 223, sect. 9, p. 48.

In the case of bills to empower any company already constituted by act of Parliament to execute any work other than that for which it was originally established, a draft of the proposed bill to be submitted to a meeting of the proprietors of such company, called by advertisement inserted for four consecutive weeks in the newspapers of each county wherein such new works are proposed to be executed, and which meeting must be held not earlier than seven days after the last insertion of such advertisement, and at such meeting the draft of the proposed bill must be approved of by at least three-fifths of the proprietors then present. 220, sect. 6, p. 45.

When any alteration has been made in a bill in its progress through Parliament, a plan and section shewing any variation, extension, or enlargement which is intended to be made in consequence of such alteration, to be deposited in the office of the clerk of the Parliaments previous to the bill being brought from the Commons, such plan and section to be on the same scale, and contain the same particulars as the original plan and section. 223, sect. 10, p. 49.

A copy of the bill, as brought into the House, to be deposited

in the office of the railway department of the Board of Trade. 227, sect. 2, p. 54.

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## PROCEEDINGS IN THE HOUSE.

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### FIRST READING.

*Eight copies of every bill originating in the House of Lords to be delivered at the office of the clerk attending the table of the House upon the first reading of the bill.* 1, p. 65.

### COMMITTEE ON STANDING ORDERS.

The committee to be appointed at the commencement of every session, and to consist of forty lords, besides the chairman of committees, who is to be always chairman of such committee. 219, sect. 2, p. 41.

Three lords, including the chairman, to be a quorum. 219, sect. 3, p. 41.

Three clear days' notice to be given of the meeting of the committee. 219, sect. 7, p. 42.

Previous to the second reading of any railway bill, such bill to be referred to the standing order committee, before which the compliance with the standing orders must be proved. 219, sect. 4, p. 41.

Any parties may appear and be heard by themselves, their agents and witnesses, upon any petition which may be referred to the committee, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in the petition, and that it be presented on or before the second day after the introduction of the bill. 219, sect. 5, p. 41.

*Any petition intended for presentation by the chairman of committees must have an endorsement stating certain particulars, and be left with Mr. Adam before three o'clock on the day on which it is intended to be presented.* 2, p. 65.

Any proprietor of a company already constituted by act of parliament, applying for power to execute, *undertake, or contribute towards* any work other than that for which it was originally established, and who dissented at the meeting of proprietors to whom the draft of the proposed bill was submitted, may, on petitioning the House, be heard by himself, his counsel, or agents, and witnesses. 234, sect. 2, p. 64.

*The service of applications to owners, lessees, and occupiers of lands may be proved before the committee by the evidence of the agent or solicitor, unless a petition complaining of the want of due service of such application shall have been referred to the committee.* 220, sect. 5, p. 44.

The committee to require proof that all persons whose names are introduced in the bill as manager, director, proprietor, or otherwise concerned in carrying the bill into effect, have subscribed their names to the petition for the bill, or to a printed copy of the bill. 225, p. 52.

The committee to report whether the standing orders have been complied with, and if not complied with, to state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case. 219, sect. 6, p. 41.

## SECOND READING.

Previous to the second reading of a bill, copies of the subscription contract, with the names of the subscribers alphabetically arranged, and the amount of deposit respectively paid up by each such subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration and estimate to be printed at the expense of the promoters of the bill, and be delivered at the office of the clerk of the Parliament. 224, sect. 6, p. 52.

*When the agent for the bill gives notice of the second reading, he is to give in to Mr. Adam a written statement as to whether the railway is a competing line, or is opposed, &c.* 4, p. 66.

*Petitions praying to be heard upon the merits against any second class railway bill must be presented on or before the day on which such bill is read a second time.* 219, sect. 21, p. 43.

## COMMITTEE ON THE BILL.

No opposed bill to be referred to an open committee. 219, sect. 9, p. 42.

Every opposed bill to be referred to a select committee of five, who are to choose their own chairman. 219, sect. 10, p. 42.

The chairman of committees and four other lords to be named by the House, to select and propose to the House the names of the five lords to form the committee on each opposed bill. 219, sect. 15, p. 42.

The committee of five not to be named to the House on the same day on which the bill is read a second time. 219, sect. 16, p. 42.

Lords to be exempted from serving on the committee on any bill wherein they have any interest. 219, sect. 13, p. 42.

Lords to be excused from serving for any special reasons to be approved of in each case, by the House. 219, sect. 14, p. 42.

The committee to meet not later than eleven o'clock every morning, and sit till four, and not to adjourn at an earlier hour, without specially reporting the cause of such adjournment to the House at its next meeting, nor adjourn over any days except Saturday and Sunday, Christmas Day and Good Friday, without leave of the House. 219, sect. 17, p. 42.

Every one of such committee of five to attend the proceedings of the committee during the whole continuance thereof. 219, sect. 11, p. 42.

If any member of the committee is prevented from continuing his attendance, the committee to adjourn, and report the cause thereof to the House at its next meeting, and not to resume its sittings without leave of the House. 219, sect. 18, p. 42.

No lord who is not one of the five to take any part of the proceedings of the committee. 219, sect. 12, p. 42.

The committee on railway and opposed bills not to examine into the compliance with the standing orders, the compliance with which is required to be proved before the standing order committee. 219, sect. 8, p. 42.

*Parties proposing to appear before the committee upon any petition referred to the committee must previously enter an appearance, by themselves or their agents, in the book kept in the committee clerk's office for that purpose. 3, p. 66.*

Any proprietor of a company already constituted by act of parliament applying for power to execute, *undertake, or contribute towards* any work other than that for which it was originally established, and who dissented at the meeting of proprietors to whom the draft of the proposed bill was submitted, may, on petitioning the House, be heard, by himself, his counsel or agents, and witnesses. 234, sect. 2, p. 64.

If any report, made under the authority of the Board of Trade, upon any railway bill, or the objects thereof, be laid before the House, such report to be referred to the committee on the bill. 219, sect. 20, p. 43.

If the committee on a railway bill recommend that in the alteration of the level of roads, steeper ascents than are specified in the standing orders be allowed, or that a railway should be made across a road on the level, they are to report the reasons and facts upon which such opinion is founded. 233, sect. 4, pars. 2 and 3, p. 61.

Committees on railway bills to inquire into the following matters, and report specially thereupon:—1. The proposed capital; shares subscribed for, and deposits paid thereon; names, &c. of directors; shareholders locally interested; number of other parties; subscribers for 2000*l.* and upwards; 2. Whether railway be a complete line, or part of a more extended plan; 3. Whether any report from Board of Trade has been referred to the committee; 4. Planes to be worked by assistant engines; 5. Engineering difficulties; 6. Size and means of ventilation of tunnels; 7. Whether the gradients and curves are favourable; 8. Length of main line, and of the branches; 9. Fitness in an engineering point of view; 10. If any highways to be passed on a level; 11. Amount of estimates, and whether adequate; 12. Estimated annual expenses; 13. Revenue in reference to annual charge; 14. Number of assents, dissents, and neuters; 15. Names of engineers examined; 16. Allegations of petitions in opposition; 17. And any other circumstance it is desirable the House should be informed of. 233, sect. 1, p. 59.

In cases where there is no opposition, or no parties appear in support of a petition in opposition to a railway bill, the committee are to determine how far it may be necessary to inquire into such particulars. 233, sect. 3, p. 61.

### FURTHER CONSIDERATION OF REPORT.

When railway bills have been opposed in the committee on the bill, the further consideration of the report will not be proceeded with until the House has received from the committee specific replies in answer to each of the questions on which they are directed specially to report. 233, sect. 2, p. 61.

### THIRD READING.

Railway bills, which have been opposed, and in which any amendments have been made in the committee, must be reprinted as amended previously to the third reading, unless the chairman of the committee shall certify that the reprinting of such bill is unnecessary. 234, sect. 1, p. 64.

*Three days* before the bill is read a third time, a copy as amended in the committee to be deposited at the Board of Trade. 234, sect. 4. p. 65.

No railway bill to be read a third time unless provision be made therein restricting the company from raising by loan or mortgage a larger sum than one-third of their capital; limiting the alterations of the level of turnpike roads to one in thirty, and of other roads to one in twenty, and prohibiting the railway from crossing highways on same level, unless the committee on the bill report that such restrictions ought not to be enforced; and limiting the time for the completion of the work. 233, sect. 4, p. 61.

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It is now proposed to give the resolutions adopted by both Houses relative to railway bills in the session of 1845, and which could not conveniently be incorporated with the foregoing orders. Some of these are permanent in their character, others are to apply only to the session in which they were adopted, but they will doubtless be renewed if similar circumstances exist in the next session.



## RESOLUTIONS RELATIVE TO RAILWAY BILLS. SESS. 1846.

### House of Commons.

*Lunæ, 26<sup>o</sup> die Januarii, 1846.*

Railway Bills.—Select Committee appointed “to consider the mode in which the House shall deal with the railway Bills proposed to be submitted to the House during the present Session.” Committee on railway bills.

*Veneris, 6<sup>o</sup> die Februarii, 1846.*

1. That with respect to any Railway Bills, which shall be brought from the House of Lords *during this Session*, this House will not insist on their privilege with regard to the Clauses fixing and regulating rates and tolls in such bills. Certain railway bills to commence in the House of Lords.

2. That with a view of affording early and increased means of employment in Ireland, it is expedient to give facilities for the early consideration of Irish Railway Bills; and that, for the attainment of this object, all such Railway Bills should, *in the present Session*, commence in the House of Lords.

3. That all Bills which compete with or ought to be considered in connexion with any Bills, the promoters of which shall prove themselves entitled to the privileges accorded to be granted in certain cases by the resolutions of this House of the 7th of July last (a), shall commence in the House of Lords.

(a) The following are the resolutions of July 7, 1845, above referred to :—

1. Resolved, That, owing to the peculiar circumstances of the present session of Parliament, the committee is of opinion that special privileges should be granted to parties wishing to re-introduce, in the next session, railway bills which, having been advanced to a certain stage, it may be found impossible to pass into laws during the present session, from want of time for their proper investigation.
2. Resolved, That such privileges be limited to the case of such bills as shall have been ordered to be engrossed by this house during the present session.
3. Resolved, That the promoters of such bills shall give notice, by advertisement, for six successive weeks in the months of October and November next, in the London, Edinburgh, or Dublin Gazette, as the case may be; and in the local paper or papers which may be usually in circulation in the part of the country through which the line of railway is proposed to pass, of their intention to present a petition for the re-introduction of any such bill.
4. Resolved, That upon any petition for leave to bring in a railway bill which shall be presented to the house during the next session of Parliament and referred to the committee on petitions, the committee do examine whether the said petition be the same in substance as any petition for the same purpose, and from the same parties, which was presented in this session of Parliament; and in that case, whether any bill brought into the house, in pursuance of such petition, in this session, was pending in either House of Parliament, on the termination of this session; and if so, whether a subscription contract, as required by the standing orders, binding in the usual way the subscribers to the undertaking, has been entered into, and is valid at the time of such inquiry, and whether the deposit of £5 per cent. upon such subscription is lodged in the manner required by the standing orders.
5. Resolved, That in such case, and on proof of such notice having been given as aforesaid, and in case it should appear that such bill had, at the end of this session, been pending in the House of Lords, or, if pending in the House of Commons, had been ordered to be engrossed, the standing orders, with respect to any such bill, shall be held to have been complied with.
6. Resolved, That the time between the second reading of any such bill which shall be brought in the next session, and the meeting of the committee thereon, be shortened to three days, the parties giving the regular notices in the Private Bill Office.

7. Resolved, That the committee on any such bill do examine whether the bill be in every respect the same as such former bill at the last stage of its proceeding in this house, in the present session, and that in such case no evidence shall be received by such committee; but that on the reception and adoption by the House of a report from such committee that the bill referred to them is in every respect the same as such former bill, at the last stage of its proceedings in this House in the present session, such bill may be ordered to be engrossed without any further proceeding in respect thereof."

4. That the parties 'promoting Railway Bills which, by the above resolutions, are to commence in the House of Lords, may (notwithstanding any proceeding respecting such Bills in the House of Lords prove, before the Committee on Petitions of the House of Commons that they have complied with the Standing Orders of this House, and the Report of such Committee shall be ordered to lie on the table. If the Committee should report that the Standing Orders have not been complied with, their Report shall be referred to the Committee on Standing Orders, whose Report shall be ordered to lie on the table.

5. That when a Railway Bill shall have been brought from the Lords, it shall be read a first time, and referred to the Select Committee on Petitions for Private Bills, who shall report, whether the Standing Orders have been complied with, or whether any Report with reference to substantially the same Bill has been previously laid on the table of the House.

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*Jovis, 12<sup>o</sup> die Februarii, 1846.*

1. That a Committee of five members be appointed, to be called the Classification Committee of Railway Bills, and that three be the quorum of such Committee.

Classification  
committee of  
railway  
bills.

2. That copies of all Petitions for Railway Bills, presented to the House be laid before the said Committee.

3. That the Committee of Classification shall inquire and report what Railway Bills compete with, or ought to be considered in connexion with, any Railway Bills, the promoters of which shall have proved themselves entitled to the privilege agreed to be granted in certain cases by the resolutions of this House of the 7th July last.

4. That the Committee of Classification shall form into

groups all other Railway Bills which, in their opinion, it would be expedient to submit to the same Committee.

5. That as soon as the Committee of Classification shall have determined what Railway Bills are to be grouped together, they shall report the same to the House, and all Petitions against any of the said Bills shall be presented to the House three clear days before the meeting of the Committee thereon.

First reading of railway bills.

6. That no Railway Bill be read a first time later than the next day but one after the Report of the Committee on Petitions or of the standing Order Committee on such Bill, as the case may be, shall have been laid on the table, except by special order of the House.

Second reading.

7. That there be no more than seven clear days between the first reading of any Railway Bill and the second reading thereof, except by special order of the House.

Breviate.

8. That the Breviate of every Railway Bill shall be laid on the table of the House, and be printed and delivered one clear day before the second reading.

9. That such Railway Bills as shall have been read a first time before the House shall agree to these resolutions, shall be read a second time within seven clear days thereafter.

Committees on railway bills.

10. That such of the Standing Orders as relate to the composition of the Committees on Private Bills, and the orders consequent thereon, be suspended so far as regards Railway Bills pending *in the course of the present Session*.

11. That Committees on Railway Bills *during the present Session* of Parliament shall be composed of a Chairman and four members, to be appointed by the Committee of Selection.

12. That each member of a Committee on a Railway Bill or Bills, shall, before he be entitled to attend and vote on such Committee, sign a declaration that his constituents have no local interest, and that he himself has no personal interest for or against any Bill referred to him; and no such Committee shall proceed to business until the whole of the members thereof shall have signed such declaration.

13. That the promoters of a Railway Bill shall be prepared to go into the Committee on the Bill on such day as the Committee of Selection shall, subject to the order that there be seven clear days between the second reading of every Private Bill and the sitting of the Committee thereupon, think proper to appoint, provided that the Classification Committee shall have reported on such Bill.

14. That the Committee of Selection shall give each Member not less than fourteen days' notice of the week in which it will be necessary for him to be in attendance, for the purpose of serving, if required, on a Railway Bill Committee.

15. That the Committee of Selection shall give each Member a sufficient notice of his appointment as a Member of a Committee on a Railway Bill, and shall transmit to him a copy of the twelfth resolution, and a blank form of the declaration therein required, with a request that he will forthwith return it to them properly filled up and signed.

16. That if the Committee of Selection shall not within due time receive from each such Member the aforesaid declaration, or an excuse which they shall deem sufficient, they shall report to the House the name of such defaulting Member.

17. That the Committee of Selection shall have the power of substituting, at any time before the first meeting of a Committee, another Member for a Member whom they shall deem it proper to excuse from serving on that Committee.

18. That power be given to the Committee of Selection to send for persons, papers, and records, in the execution of the duties imposed on them by the foregoing resolutions. Committees on railway bills continued.

19. That no Member of a Committee shall absent himself from his duties on such Committee, unless in the case of sickness or by leave of the House.

20. That all questions before Committees on Railway Groups or Bills shall be decided by a majority of voices, including the voice of the Chairman; and that whenever the voices shall be equal, the Chairman shall have a second or casting vote.

21. That, if the Chairman shall be absent from the Committee, the Member next in rotation on the List who shall be present shall act as Chairman.

22. That Committees shall be allowed to proceed so long as three Members shall be present, but not with a less number, unless by special leave of the House.

23. That if on any day within one hour after the time appointed for the meeting of a Committee three Members shall not be present, the Committee shall be adjourned to the same hour on the next day on which the House shall meet, which had been fixed for that day.

24. That in the case of a Member not being present within one hour after the time appointed for the meeting of the Committee, or of any Member absenting himself from his duties on such Committee, such Member shall be reported to the House at its next sitting.

25. That each Committee shall be appointed to meet on each day of its sitting not later than twelve o'clock, unless by the regular vote of the Committee.

26. That Committees on Railway Bills have leave to sit *in the present Session*, notwithstanding any adjournment of the House, if the Committees shall so think fit.

Maximum  
rates of  
charges.

27. That every Committee on a Railway Bill shall fix the Tolls, and shall determine the maximum rates of charge for the conveyance of passengers (with a due amount of luggage) and of goods on such Railway, and such rates of charge shall include the tolls, and the costs of locomotive power, and every other expense connected with the conveyance of passengers (with a due amount of luggage) and of goods upon such Railway; but if the Committee shall not deem it expedient to determine such maximum rates of charge, a Special Report, explanatory of the grounds of their omitting so to do, shall be made to the House, which Special Report shall accompany the Report of the Bill.

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*Lunæ, 16<sup>o</sup> die Februarii, 1846.*

Instruction  
respecting  
petitions.

That it be an instruction to the Select Committee on petitions for Private Bills, and to all Committees upon Private Bills, not to hear parties on any petition hereafter referred to them, which shall not be prepared and signed in strict conformity with the Rules and Orders of this House.

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*Martis, 17<sup>o</sup> die Februarii, 1846.*

Works be-  
low high-  
water mark.

That all Bills for the formation or improvement of harbours and wet docks, navigable rivers, and canals and works of every kind, on lands within highwater mark, be referred to the Board of Admiralty for their report thereon, before the Committee on the Bill shall report to the House.

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*Jovis, 19<sup>o</sup> die Februarii, 1846.*

Notice of  
committee  
on petition.

Private Bills.—That no notice for a Committee on a petition for a private Bill be received at the Private Bill

Office which shall fix for the first meeting of such Committee any day later than Friday, the 6th day of March next.

That no notice of postponement of any such Committee be received at the Private Bill Office except by the authority of the Committee on petitions for private Bills. Notice of postponement.

That no private Bill be read a first time later than the next day but one after the report of the Committee on petitions, or of the Standing Orders Committee, on such Bill as the case may be, shall have been laid on the table, except by special order of the House. First reading.

Railway Bills.—Paragraphs 7, 8, and 9 of Standing Order No. 87, read as follows:— Repeal of pars. 7, 8, and 9, of Order No. 87.

“That in the case of a railway Bill, the Committee report specially:—

7. The sufficiency or insufficiency for agricultural, commercial, manufacturing or other purposes, of the present means of conveyance, and of communication between the proposed termini, stating the present amount of traffic by land or water, the average charges made for passengers and goods, and time occupied.

8. The number of passengers, and the weight and description of the goods expected upon the proposed Railway.

9. The amount of income expected to arise from the conveyance of passengers and goods, and in what proportion; stating also generally the description of goods from which the largest revenue is anticipated.”

and repealed.

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*Mercurii, 25<sup>o</sup> die Februarii, 1846.*

Breviates of Private Bills.—That Standing Order, No. 14, requiring the Breviate of all Private Bills to be laid on the table three clear days before the second reading of such Bills; and Standing Order, No. 119, requiring Breviates of Bills amended in Committee to be submitted to the Chairman of Ways and Means, and laid on the table the day previous to the consideration of the Report, be suspended with respect to all Bills entitled to the privileges agreed to be granted in certain cases by the Resolutions of the House on the 7th day of July last. Suspension of certain orders with respect to privileged bills.

*Jovis, 26<sup>o</sup> die Februarii, 1846.*

Unopposed  
railway  
bills.

**Railway Bills.**—That all Select Committees on Finance Groups or Bills be empowered to refer (if they shall think fit) to the Chairman of Ways and Means, together with the Members ordered to prepare and bring in such Bill, any unopposed Railway Bill submitted for consideration, and that such Bills be severally dealt by the said Chairman, and those Members respecting with him, as other unopposed Bills are to be dealt with.

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*Martis, 3<sup>o</sup> die Martii, 1846.*

Suspension  
of certain  
orders with  
respect to  
privileged  
bills.

**Private Bills.**—That Standing Order, No. 110, requiring that there be three clear days between the first and second reading of a Private Bill; and Standing Order, No. 134, requiring three clear days' notice of a Bill to be given in the Private Bill Office; and Standing Order, No. 139, requiring one clear day's notice in the Private Bill Office of the day proposed for the Report of every Private Bill, and also for the consideration of the Report; and Standing order, No. 123, requiring the Reports on Railway Bills to be discussed on Tuesday and Thursday; and Standing Order, No. 124, requiring one clear day's notice of the third reading of a Private Bill; and Standing Order, No. 124, prohibiting a Private Bill from passing through two stages on the same day, be suspended with respect to all Bills entitled to the privileges granted by the Resolutions of the House of Commons on the 7th day of July last.

Second  
reading.

That such Bills may be read a second time on the day following the first reading of such Bills.

Report.

That the Committee on such Bills may report, and their Report may be considered, on the same day with that on which the Committee sits.

Third  
reading.

That such Bills may be read a third time on the day following the second reading.

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*Jovis, 5<sup>o</sup> die Martii, 1846.*

Repeal of  
par. 20 of  
order No.  
87.

**Railway Bills.**—Paragraph 20, of the Standing Order, No. 87, read, as follows:—

“That in the case of a Railway Bill, the Committee may report specially:—

Whether the calculations proved in evidence before the Committee have satisfactorily established, that



revenue is likely to be sufficient to support the annual charges of the maintenance of the Railway, and still allow profit to the projectors."

and repealed.

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*Jovis, 19<sup>o</sup> die Martii, 1846.*

**Railways.**—Select Committee appointed to "inquire whether, without discouraging legitimate enterprise, conditions may not be embodied in Railway Acts, better fitted than those hitherto inserted in them, to promote and secure the interests of the public." Mr. Morrison's committee.

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*Lunæ, 23<sup>o</sup> die Martii, 1846.*

**Railways and Canals Amalgamation.**—Select Committee appointed, "to consider the principle of Amalgamation, as applied to the Railway and Canal Bills now under the consideration of Parliament." Committee on amalgamations.

**Railways (Metropolis).**—"That an humble address be presented to her Majesty," praying that her Majesty will be pleased to give directions for the appointment of a Commission, to investigate and report upon the various Railway projects of which the termini are proposed to be established within or in the immediate vicinity of the Metropolis." Commission to report on Metropolis Railways.

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*Jovis, 26<sup>o</sup> die Martii, 1846.*

**Amalgamation Bills.**—That no Amalgamation Bills specified in the Ninth Report of the Classification Committee of Railway Bills, be allowed to proceed beyond the Second Reading, before the 1st day of May next. Suspension of Amalgamation Bills.

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*Jovis, 2<sup>o</sup> die Aprilis, 1846.*

**Railway Bills.**—That every Committee on a Railway Bill shall fix the tolls, and shall determine the maximum rates of charge for the conveyance of passengers (with a due amount of luggage) and of goods on such Railway; and such rates of charge shall include the tolls, and the costs of locomotive power, and every other expense connected with the conveyance of passengers (with a due amount of luggage) and of goods upon such Railway; but if the Committee shall not deem it expedient to determine such Committees on railway bills to determine maximum charges.

maximum rates of charge, a special Report, explanatory of the grounds of their omitting so to do, shall be made to the House, which special Report shall accompany the Report of the Bill.

Clause to be inserted in railway bills.

Railway Bills.—That the following clause be inserted in all Railway Bills passing through the House: “And be it further enacted, That nothing herein contained shall be deemed or construed to exempt the Railway by this or the recited Acts authorized to be made from the provisions of any General Act relating to such Bills, or of any General Act relating to Railways which may hereafter pass during this or any future Session of Parliament, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges authorized by this Act.”

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*Veneris, 3<sup>o</sup> die Aprilis, 1846.*

Standing Orders.—Standing Order No. 135, read and repealed.

Notice of meeting of committee on bill.

That seven clear days' notice, and in the case of a re-committed Bill, three clear days' notice, in writing, be given by the Clerk to the Committee of Selection, to the Clerks in the Private Bill Office, of the day and hour appointed for the meeting of the Committee on every Private Bill; and that all the proceedings of any Committee, of which such notice shall not have been given, be void.

That the said Resolution be a Standing Order of the House.

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*Martis, 7<sup>o</sup> die Aprilis, 1846.*

Postponement of railway bills.

Railway Bills.—That all proceedings on Railway Bills in Committees and in the House, after Thursday next, be postponed until Monday the 27th day of this instant April.

That no Railway Bill be read the third time before Monday the 27th day of this instant April.

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*Jovis, 23<sup>o</sup> die Aprilis, 1846.*

Resolutions proposed by Sir Robert Peel.

Railway Bills.—That this House will not read a third time any Bill to empower any Company (whether intended to be incorporated by such Bill, or already incorporated by Act of Parliament) to construct a Railway, unless three clear days before the third reading, there shall have been deposited at the Private Bill Office, there to be open to the inspection of all parties, a certificate signed and authenti-

ated in manner hereinafter mentioned, and comprising the particulars hereinafter expressed, and stating the following facts, viz. :

Resolutions  
proposed by  
Sir Robert  
Peel  
continued.

1. That a copy of the Bill was submitted to the consideration of a meeting of the holders of scrip, or of bankers' receipts for scrip, of the Company, or (in case of a Company already incorporated) of the shareholders or stockholders of the Company, specially called for that purpose.
2. (*As altered the 27th April.*) That such meeting was called by advertisements, inserted once in each of two consecutive weeks in the London Gazette (if the Railway be an English Railway), or in the London and Edinburgh Gazettes (if the Railway be a Scotch Railway), or in the London and the Dublin Gazettes (if the Railway be an Irish Railway), and in each case in at least three London daily newspapers, and not less than three times in each such paper, in each of such two consecutive weeks; and in case the Railway be a Scotch Railway, not less than twice in each of three Edinburgh newspapers in each of such two consecutive weeks; and in case the Railway be an Irish Railway, not less than three times in each of two Dublin daily newspapers in each of such two consecutive weeks.
3. In the case of a Company being intended to be incorporated by the Bill:—That such meeting was constituted of persons producing thereat scrip, or bankers' receipts for scrip, of the Company representing not less than one-third part of the whole capital proposed to be raised by the Company under the Bill (such scrip having been actually issued, or the deposits in respect thereof having been paid before the 31st of March in the present year.)
4. In the case of the Company being already incorporated:—That such Meeting was held, except so far as is herein otherwise provided, according to the constitution of the Company, and was constituted of shareholders or stockholders thereof competent to vote at the ordinary Meetings of the Company, and representing either personally or as proxies not less than one-third part of the whole capital or stock of the Company.
5. That at such Meeting the Bill was approved of by persons producing thereat scrip, or bankers' receipts

Resolutions proposed by Sir Robert Peel continued.

for scrip, equal to at least three-fifths of the total amount of scrip, or bankers' receipts for scrip, produced at the Meeting; or, in the case of a Company already incorporated, by three-fifths at least of the Meeting, the votes being given and computed according to the constitution of the Company.

6. That those cases in which the Bill is promoted by an incorporated Company, but the parties interested are holders of scrip which it is proposed shall be converted into shares or stock, or otherwise become portion of the interest of the incorporated Company on the passing of the Bill, and contingently only on that event, shall for the purposes of this resolution be deemed to be cases of Companies not yet incorporated.

That for the purposes of this resolution it shall be competent for the chairman of any meeting called in pursuance thereof, in the event of the above prescribed quorum of scrip, shares, or stock (as the case may be) not being represented at such Meeting, to cause the votes of the persons constituting the said Meeting, approving or not approving of the Bill, to be taken and recorded, and then to adjourn the same to some day, hour, and place to be declared by the Chairman, such day not being less than three days, and not more than one week. from the original day of Meeting, and such day, hour, and place being, in the meantime, advertised twice in each of three London daily newspapers, or in the Edinburgh or Dublin newspapers, as above directed in the case of Scotch or Irish Railways; and at such adjourned Meeting it shall also be competent to the Chairman thereof to cause to be taken and recorded the votes of such of the persons constituting the same as have not voted at the original Meeting; and the total amount of votes given at the original and adjourned Meeting shall be received as if given at one and the same Meeting.

That such certificate shall also comprise, in a tabular form, the following particulars :

1. The day, time, and place of the meeting, and of the adjourned meeting (if any).
2. The dates of insertion of the advertisements for the meeting, and the names of the newspapers in which they were inserted.
3. The names and addresses of the persons producing scrip, or bankers' receipts for scrip, at the meeting, according to the statements of such persons :

Or, in the case of a Company already incorporated,

Resolu-  
tions pro-  
posed by  
Sir Robert  
Peel  
continued.

The names and addresses of the shareholders, or stockholders, present at the meeting, according to the register book of names and addresses.

4. The denoting numbers, if any, of the scrip, and in the case of bankers' receipts, the names of the persons from whom the deposit is therein stated to be received, and the amount of the scrip and receipts respectively produced by the persons so producing the same at the meeting :

Or, in the case of a Company already incorporated.

The respective amounts of shares or stock held or represented by the shareholders or stockholders attending the meeting.

5. The fact of the approval or non-approval of the Bill (as the case may be) by the several persons producing scrip or bankers' receipts at the meeting, or by the several shareholders or stockholders attending the meeting.

6. The total amount of scrip and bankers' receipts produced at such meeting, and the amount thereof produced by the persons approving of the Bill :

Or, in the case of a Company already incorporated,

The total amount of shares or stock represented, either in person or by proxy, at the Meeting, and the amount thereof so represented by persons approving of the Bill.

7. The total amount of the capital proposed to be raised by the Company under the Bill.

Or, in the case of a Company already incorporated,

The total amount of the capital or stock of such Company.

That such certificate shall be signed by the Chairman of the Meeting and by one of the solicitors of the Company ; and the authenticity of such certificate shall be verified by the signature of the Parliamentary agent depositing the same.

That these resolutions shall not apply to any Bill, the third reading of which is fixed for Monday next.

Railway Bills.—That it be an instruction to the Committee on every Private Bill, originated in this House, relating to any Railway, before proceeding with the merits

Instruction  
to commit-  
tees on rail-

way bills  
proposed  
by Mr.  
Thomas  
Duncombe.

of such Bill, to require to be produced before them, and verified by the promoters—

1. A copy of the original return made for the purposes of provisional registration, with the names of the promoters as then registered.
2. The names, residences, and descriptions of the present and past Provisional Directors, Treasurers, Solicitors, Secretary, and other officer, if any.
3. The present and proposed amount of the capital of the Company.
4. The number of shares, and the amount of each share.
5. The number of shares actually allotted, with the names, residences, and descriptions of the original allottees, and the number of shares allotted to each.
6. The amount of subscriptions paid up by such original allottees.
7. The amount of shares retained by or for the Provisional Committee.
8. The amount of subscriptions actually paid up by such Provisional Committee upon the shares originally allotted to them.
9. The original subscribers' agreement, signed by the allottees.
10. A statement of the amount of money in hand, together with an abstract of all receipts and expenditure, up to the presentation of the petition for the Bill.
11. A statement of the source whence the Parliamentary deposit was paid, or whether a declaration was made of a surplus revenue instead of a deposit.

And that the Committee report specially on each of the foregoing particulars.

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*Martis, 28<sup>o</sup> die Aprilis, 1846.*

Instruction  
to commit-  
tees on  
amalgama-  
tion bills.

**Railway Bills.**—Ordered that it be an instruction to the several Committees on Railway groups, that in all instances in which Railway Companies propose to take powers of amalgamation with other Companies, either by sale, purchase, lease, or otherwise, the rates and charges of such Companies be revised, and a new maximum imposed; and that they specially report any circumstance which may have induced them to allow such maximum to exceed the minimum of rates and tolls actually charged and received by the respective Companies at any previous period:—

That they also append to their report a schedule, containing, under the various heads of traffic, the minimum of rates and tolls previously received, and the maximum which it is proposed to allow the Companies to take under their Bill.

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### SUGGESTIONS FOR THE CONSIDERATION OF THE SELECT COMMITTEES ON RAILWAY GROUPS.

1. The attention of every Committee should be directed to the following resolution of the House; "That all Select Committees on Railway Groups or Bills be empowered to refer (if they shall so think fit) to the Chairman of Ways and Means, together with the members ordered to prepare and bring in each such Bill, any unopposed Railway Bill submitted for their consideration, and that such Bills be severally dealt with by the said Chairman, and those members respectively acting with him, as other unopposed Bills are to be dealt with." Unopposed railway bills.
2. If parties agree as to the order of precedence in which other Bills included in the Group shall be taken, the Committee will adopt their agreement. Order of precedence.
3. If parties do not agree, the Committee will decide the order of precedence, without hearing counsel.
4. In this case such Bills in each Group as are not opposed by competing lines, will be first taken into consideration, in the order in which they have been read a second time.
5. With respect to competing lines, the Committee will subdivide, if necessary, the Bills in each Group, so as to distribute into separate classes the Bills for such lines as compete *inter se*. Competing lines.
6. With regard to such separate classes and the Bills in such classes, the Committee must exercise its discretion, according to the circumstances of the case, in determining the order of precedence.
7. In the cases of Bills for lines of railway competing *inter se*, the following course, adopted last session, is proposed to be continued.

Suppose a case of four competing Bills :

No. 1. Counsel opens the case, and then produces evidence.

Landowners and other opponents, and Nos. 2, 3, & 4, then cross-examine.

No. 1. Re-examines—

Landowners and other opponents, and then Nos. 2, 3, & 4, offer consecutively positive evidence in opposition to No. 1, on the merits of his case,

No. 1 cross-examines.

Landowners and other opponents, and then Nos. 2, 3, & 4 re-examine.

Same process with 2, 3, & 4, in rotation, and 4, 3, 2, & 1, reply.

Where the opposition of several distinct opposing parties turns on the same points, it will be desirable to restrict, as far as possible, the limits within which the right of successive examinations and cross-examinations shall be exercised.

Opening  
statement.

8. In all cases the counsel in opening the case is to be restricted to a statement of facts. The counsel for opponents may either address the Committee previously to offering evidence, or afterwards, but not both.

Printed  
statement.

9. The promoters of each Bill shall be required, two clear days before the day appointed for the first sitting of the Committee, to furnish to the clerk of the Committee, for the use of each member thereof, a particular printed statement of the chief points, succinctly stated, on which they rest their case.

10. The opponents of a Bill shall be required to furnish at the same time a like statement of the chief points on which they rest their opposition.

Evidence  
as to traffic  
not re-  
quired.

11. The Standing Orders as to traffic having been rescinded, no detailed evidence as to traffic shall in ordinary cases be received either in support of or in opposition to a Bill, but the promoters of a Bill shall be required to append to the foregoing statement a printed list of the chief cities or towns intended to be accommodated, with their respective distances from the proposed line, together with the amount of the population of such cities or towns, taken from the returns of the last general census. It will of course be competent to the Committee, if they shall see sufficient cause, to require further evidence as to traffic.

Limitation  
of en-  
gineering  
evidence.

12. With a view to place some reasonable limit on the amount of engineering evidence, parties shall be required to furnish the Committee with the names of the engineering



witnesses whom they propose to call; and it is recommended that Committees should place some limit on the number of engineering witnesses to be examined with reference to the same portion of any proposed line.

13. In the case of Amalgamation Bills, the promoters of any such Bill shall be required to furnish the Committee with a printed statement of all the pecuniary claims and liabilities to which any Company included in the proposed amalgamation is subject by any previous Act of Parliament.

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## House of Lords.

*Die Jovis, 29° Januarii, 1846.*

That a Select Committee be appointed to consider the mode in which the House shall deal with the Railway Bills proposed to be submitted to the House during the present Session.

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*Die Veneris, 6° Februarii, 1846.*

That such portion of the Standing Order, No. 224, as requires from the promoters of Railway Bills a deposit of one-tenth of the amount subscribed shall be suspended, with respect to all such Railway Bills as shall commence in the House of Lords *during the present Session*. That no such Railway Bill shall be read a first time in this House, unless a deposit of one-twentieth part of the amount subscribed shall have been made on or before the 6th day of February, and no such Railway Bill shall be read a third time until a further deposit of one-twentieth part of the amount subscribed, shall in like manner be made.

Suspension of order respecting deposits.

That this House will not receive any petition for a Railway Bill after *Monday, the 23rd of this instant, February*, bill.

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*Die Veneris. 13° Februarii, 1846.*

That Standing Order, No. 219, be altered in the following particulars (viz.):

Alteration of order No. 219.

That on the Bill being reported to the House from the Committee on the Bill, or at any time previously, on the petition of the parties to such Bill, or any of them, the Bill shall be referred to the Standing Order Committee, which shall inquire whether the Standing Orders, the compliance with which is directed to be proved before or reported by the Standing Order Committee previously to the third reading of the Bill, have been complied with: and the Committee shall report on the matters referred to them, in the same manner as they are directed to report on other matters referred to them by the Standing Orders:

That five clear days' notice be given of such meeting of the Committee, and that it be proved to the satisfaction of the Committee that the Standing Orders had been complied with five clear days before such meeting of the Committee:

That the Standing Order Committee shall not meet to consider the compliance with such of the Standing Orders as are directed to be proved before them, until after the expiration of seven clear days from the presentation of the petition if the Bill relate to England, or until after the expiration of ten clear days if the Bill relate to Scotland or Ireland:

That every petition complaining of a non-compliance with such of the Standing Orders as are directed to be proved before the Standing Order Committee subsequently to the first reading of the Bill shall be presented three clear days before the meeting of the Committee to consider such Standing Orders:

Alteration  
of order  
No. 220.

That Standing Order, No. 220, be altered in the following particulars (viz.):

That the service of every application required to be made to the owners or reputed owners, lessees or reputed lessees, and occupiers, by the fourth paragraph of the said Standing Order, may, unless a petition complaining of the want of due service of such application shall have been referred to the Standing Order Committee, be proved by the evidence of the agent or solicitor for the Bill, stating that he gave directions for the service of such application in the manner and within the time required by the Standing Orders, and that he believes that such application was so served; but in case the Standing Order Committee shall not be satisfied with

the evidence of the agent or solicitor, the service of such application shall be proved in the usual manner.

That no Bill commencing in this House, and empowering any Company already constituted by Act of Parliament to execute any work other than that for which it was originally established, shall be read a third time, unless the Committee on Standing Orders shall have specially reported that the requisitions contained in paragraph No. 5 of such order have been complied with :

That Standing Order, No. 224, be altered in the following particulars ; (viz.)

Alteration  
of order  
No. 224.

That as respects all Railway Bills which shall commence in this House during *the present Session of Parliament*, it shall be proved to the satisfaction of the Standing Order Committee that a sum equal to one-twentieth part of the amount subscribed has been deposited, in the manner required by the said Standing Order, on or before the sixth day of February instant ; and it shall likewise be proved to the satisfaction of the said Committee before the third reading of such Bill, that a further sum equal to one-twentieth part of the amount subscribed has been deposited in like manner : and that the amendment made to the said Standing Order on the 6th instant be further amended by substituting the word "Second" for the word "First:"

That Standing Order, No. 225, be altered in the following particulars ; (viz.)

Alteration  
of order  
No. 225.

That it shall be sufficient if the proof required to be given by the last-mentioned Standing Order be adduced before the Standing Order Committee at any time previous to the third reading of the Bill.

That all the Standing Orders applicable to Railway Bills, except such of them or such part of them as are altered by or inconsistent with the aforesaid Standing Orders, shall apply to the Railway Bills commenced in this House during the present Session of Parliament, and to the proceedings on such Bills.

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*Die Jovis, 12° Martii, 1846.*

Standing Order, No. 233.—The second, third, and fourth Sections thereof, considered, and the said Sections vacated.

Repeal of  
No. 233,  
pars. 2, 3,  
& 4.

*Die Jovis, 19<sup>o</sup> Martii, 1846.*

Petitions  
against  
railway  
bills.

Railway Bills.—That no Petition, praying to be heard upon the merits against any Second Class Railway Bill, shall be received by this House, unless the same be presented on or before the day on which such Bill shall be read a second time.

That the above Order shall come into operation on and after Thursday, the 26th instant.

*Die Lunæ, 30<sup>o</sup> Martii, 1846.*

Select com-  
mittee on  
railways.

That a Select Committee be appointed—

To take into consideration the best means of enforcing one uniform system of management on railroads in operation or to be constructed, and to secure the due fulfilment of the provisions of the Acts of Parliament under which the Companies have obtained their powers, whereby greater accommodation and safety may be ensured to the public.

To take into consideration what means may best be adopted for diminishing the extravagant expenses attendant on obtaining Acts of Parliament for legitimate and necessary undertakings, and at the same time for discouraging the formation of schemes got up for the mere purpose of speculation.

To consider what legislative measures could be framed to protect individuals from the injury they may sustain by the laying down lines of Railway through their property, without subjecting them to the ruinous expense of opposing Bills in Parliament.

*Die Lunæ, 27<sup>o</sup> Aprilis, 1846.*

Resolutions  
proposed by  
Lord Dal-  
housie.

Railways.—I. That this House will not read a third time any Bill to empower any Company (whether intended to be incorporated by such Bill or already incorporated by Act of Parliament) to construct a railway, unless three clear days before the third reading there shall have been deposited at the office of the clerk of the Parliaments, there to be open to the inspection of all parties, a certificate signed and authenticated in manner herein-after mentioned, and comprising the particulars hereinafter expressed, and stating the following facts, viz.,—

1. That a copy of the bill in the state in which it may have been at the time before either House of Parlia-

ment was submitted to the consideration of a meeting of the holders of scrip, or of bankers' receipts entitling the parties to claim scrip, of the Company, or (in case of a Company already incorporated) of the shareholders or stockholders of the Company, especially called for that purpose. Resolutions proposed by Lord Dalhousie continued.

2. That such Meeting was called by advertisements inserted once in each of two consecutive weeks in the London Gazette (if the Railway be an English Railway), or in the London and the Edinburgh Gazettes (if the Railway be a Scotch Railway), or in the London and the Dublin Gazettes (if the Railway be an Irish Railway), and in each case in at least three London daily newspapers, and not less than three times in each such paper, in each of such two consecutive weeks; and in case the Railway be a Scotch Railway, not less than twice in each of three Edinburgh newspapers in each of such two consecutive weeks; and in case the Railway be an Irish Railway, not less than three times in two Dublin daily newspapers in each of two such consecutive weeks.
3. In case of the Company being intended to be incorporated by the Bill:—That such Meeting was constituted of persons producing thereat scrip or bankers' receipts as aforesaid of the Company representing not less than one-third part of the whole capital proposed to be raised by the Company under the Bill (such scrip having been actually issued, or the deposits in respect thereof having been paid, or such receipts bearing date before the 31st of March in the present year.)
4. In the case of the Company being already incorporated:—That such Meeting was held, except so far as is herein otherwise provided, according to the constitution of the Company, and was constituted of shareholders or stockholders thereof competent to vote at the ordinary Meetings of the Company, and representing, either personally or as proxies, not less than one-third part of the whole capital or stock of the Company.
5. That at such Meeting the Bill was approved of by persons producing thereat scrip or bankers' receipts as aforesaid equal to at least three-fifths of the total amount of scrip or bankers' receipts as aforesaid produced at the Meeting, or, in the case of a company already incorporated, by three-fifths at least of the Meeting, the votes being given and computed according to the constitution of the Company.

Resolutions  
proposed by  
Lord Dal-  
housie  
continued.

6. That those cases in which the Bill is promoted by the incorporated Company, but the parties interested are holders of scrip which it is proposed shall be converted into shares or stock, or otherwise become portion of the interest of the incorporated Company on the passing of the Bill, and contingently only on that event, shall, for the purposes of these resolutions, be deemed to be cases of Companies not yet incorporated.

II. That, for the purposes of these resolutions, it shall be competent for the Chairman of any meeting called in pursuance thereof, in the event of the above prescribed quorum of scrip, bankers' receipts as aforesaid, shares, or stock (as the case may be) not being represented at such Meeting, to cause the votes of the persons constituting the said Meeting, approving or not approving of the Bill, to be taken and recorded, and then to adjourn the same to some day, hour, and place, to be declared by the Chairman, such day not being less than three days, and not more than one week, from the original day of meeting, and such day, hour, and place, being in the meantime advertised twice in each of three London daily newspapers, or twice in the Edinburgh or Dublin newspapers in the case of Scotch or Irish railways; and at such adjourned Meeting it shall also be competent to the Chairman thereof to cause to be taken and recorded the votes of such of the persons constituting the same as have not voted at the original Meeting; and the total amount of votes given at the original and adjourned Meeting shall be received as if given at one and the same Meeting.

III. That such certificate shall also comprise, in a tabular form, the following particulars:—

1. The day, time, and place of the Meeting and of the adjourned meeting (if any).
2. The dates of insertion of the advertisements for the Meeting, and the names of the newspapers in which they were inserted.
3. The names and addresses of the persons producing scrip or bankers' receipts as aforesaid at the Meeting, according to the statements of such persons; or, in the case of a Company already incorporated, the names and addresses of the shareholders or stockholders present at the Meeting, according to the register book of names and addresses.
4. The denoting numbers of the scrip, and in the case of bankers' receipts the names of the persons from whom

deposit is therein stated to be received, and the amount of the scrip and receipts respectively produced by the persons so producing the same at the Meeting; in the case of a Company already incorporated, the respective amounts of shares or stock held or represented by the shareholders or stockholders attending Meeting.

Resolutions  
proposed by  
Lord Dal-  
housie  
continued.

the fact of the approval or non-approval of the Bill (as the case may be) by the several persons producing proper or bankers' receipts at the Meeting, or by the several shareholders or stockholders attending the Meeting.

the total amount of scrip and bankers' receipts produced at such Meeting, and the amount thereof produced by the persons approving of the Bill; or, in the case of a Company already incorporated, the total amount of shares or stock represented, either in person or by proxy, at the Meeting, and the amount thereof so represented by persons approving of the

the total amount of the capital proposed to be raised by the Company under the Bill; or, in the case of a Company already incorporated, the total amount of the capital or stock of such company.

That such certificate shall be signed by the Chairman of the Meeting and by one of the Solicitors of the Crown; and the authenticity of such certificate shall be proved by the signature of the Parliamentary Agent deposing the same.

That these resolutions shall not apply to any Bill brought in for a Third Reading.

*Of the practice of Committees as regulated by the Usage of Parliament.*

If it would have been difficult at any time to have reduced the practice of Parliamentary committees to fixed rules, that difficulty has been unquestionably much increased by the innumerable decisions, not all very reconcileable, of the last two sessions. And yet it is felt that those persons who contemplate appearing before Parliament will probably desire to know, if not what are the principles of Parliamentary practice, at least what that practice is at present, where, if anywhere, it is settled, where it is uncertain, and the extent of the uncertainty. If a clear and safe route be not discoverable, it is something to be acquainted with the difficulties of the way.

Any points on which so many otherwise differing tribunals have been unanimous, may perhaps reasonably be looked upon as landmarks which future committees will not remove. It may be scarcely less important, however, to know what others have been unsettled by conflicting decisions, in order to be prepared accordingly: to be ready, for example, with other evidence, in the event of evidence relied on being rejected—or, with evidence which may have seemed inadmissible, on the chance of its being received; to attempt a *locus standi* on ground apparently untenable, or to approach with caution what may have seemed secure.

All that will be attempted, is to give some notion of what the practice has been, without referring more than necessary to particular decisions.

It would obviously be unreasonable to expect to trace through the decisions of country gentlemen on a great variety of points that uniformity which ought to be found in those of lawyers, and to collect and publish all decisions not quite reconcileable with each other, would be useless and improper. Some few such, however, involving points of importance, and likely to recur, it has been thought necessary to quote for the information of suitors to the House, and with a view of suggesting, with much diffidence, that a uniform practice would be desirable.

On the appointment of a committee, its first proceeding is to elect a chairman, upon which the parties are called in, and it becomes an open Court, which it continues to be during the addresses of counsel or the examination of witnesses. While the committee are voting or deliberating, strangers are ordered to withdraw. Every question is determined by a majority of the committee, the chairmen voting only when the members are equally divided. Unopposed bills are usually taken first. What has been said relative to the matters on which the committee have to report, will indicate sufficiently what evidence it will be necessary to be prepared with—commonly one or two witnesses will be



enough to satisfy the committee;—that, however, is a matter to be determined by circumstances, and their discretion.

In the case of opposed bills, it becomes necessary to inquire first, what constitutes a *locus standi* to be heard by counsel or in person against a bill.

1st. All competing projects which have been referred to the same group, receive their *locus standi* from that reference, and it may be here remarked, that projectors who have duly deposited their plans and sections, and come to Parliament with a *bond fide* intention of carrying out their scheme, but have failed before the Standing Orders' Committee in consequence of noncompliance with some of the standing orders, will be permitted to oppose a bill, though incapacitated from bringing forward one of their own—but no company which has not appeared before Parliament will be allowed to do so.

For example:—In Group SS, chairman Lord Harry Vane, a body provisionally registered under 7 and 8 Vict. c. 110, projecting a scheme for a line alleged to be a preferable one, but who had not deposited plans or sections, or taken any step for applying to Parliament, petitioned against the Coventry and Nun-Eaton line.

It was held that they had no *locus standi* before the committee.

2nd. Owners or occupiers of lands or premises cut through, or otherwise physically injured or damaged, or rendered less accessible by the railway, whether or not they have been comprised in the schedule to the act.

Those comprised in the schedule have, *ipso facto*, a *locus standi*; and it has been decided that a Company having given notice to a landowner are estopped from disputing his title. Before the committee presided over by Lord Morpeth this session evidence was offered that the person opposing was a mortgagor of the premises out of possession, and in insolvent circumstances, without legal or equitable title, who had been induced to lend his name to a rival company which had failed on the Standing Orders, and that the mortgagee in possession was favourable to the Railway. Notice, however, having been given by the Company to the mortgagor, the committee refused to enter into the question of his title to or interest in the premises. The Lords, however, have on several occasions acted on a different rule, and discouraged the practice of rival schemes opposing under the colour of landowners who have no interest in the lands in respect of which they appear. Those landowners not included in the schedule might have opposed the bill before the Standing Orders Committee; their having omitted to do so, however, does not preclude them from opposing it before the committee on the bill; proof, however, of the damage done is requisite to establish their *locus standi*.

It is a question by no means settled *what interest* in land constitutes a *locus standi*.

A committee (Group Z, Mr. Clive, chairman) decided that a canal company whose lands were actually cut through by a Railway, had not sufficient interest in them to obtain for them a *locus standi*, as landowners, at least so as to set up another line, by general evidence.

On the other hand, before another committee, some inhabitants of Perth were allowed a *locus standi* as landowners, and the evidence to which landowners are entitled, against a railway, on the ground that it intersected certain play-grounds to which their children were in the habit of resorting, and over which it would seem they could have at the most but an easement.

These have been quoted as the extreme decisions on this point, it not being thought necessary to cite intermediate ones more or less reconcilable with each other.

The rule of practice, at least previous to the last two sessions, has been understood to be, that although petitions could be entertained from any one, those only could be heard in person or by counsel against a bill who are comprised in the above divisions—and that parties merely complaining of deterioration of the value of their property through the loss of trade, or other circumstances, supposing it to be physically uninjured, did not possess a *locus standi*:

This rule seems to be based on a consideration of the wide field of dispute which would be opened by admitting parties to complain of deterioration of their property by a great public work,—and of the difficulty of drawing any line of separation among the innumerable complainants who would be let in. The influence of the Great Western Railway must extend some thirty or forty miles on each side into the country through which it passes, and must necessarily create vast changes in the value of property. If this or that town or village has been injured by its rival town or village being made the place of a station: if Slough profits by London visitors at the expense of Finchley; if hotels and posting-houses are ruined, if canals lose their traffic, and stage-coaches their passengers; if the suppliers of the London markets are injured by distant competitors; is it possible for committees to hear all these classes of complainants, who may allege with truth that their property is made less valuable? If not, whom or what number shall it decide to hear?—Those whose property is physically damaged by a railway, are comparatively few—nor is it very difficult to determine what is or is not physical damage.

In two cases during the session of 1845 (it is believed not in more), this rule, involving certainly great hardships in many cases, has been broken through.

In Committee Group L, Mr. Beckett Denison, chairman, Mr. Serjeant Talfourd was admitted to be heard against the Guildford and Chichester line, in behalf of petitioners amounting to 10,000, representing themselves as merchants, bankers, and traders of the

own of Portsmouth, and complaining that the railway would diminish the value of their property, although none of them were in the schedule, or professed that their property would be physically damaged. The other case occurred before committee Group SS, Lord Harry Vane chairman, where the inhabitants of Nun-Eaton were admitted to petition against the Coventry and Nun-Eaton line.

In reference to the time for presenting a petition, it was decided in Group N, Mr. Macaulay chairman, that the committee had no power to entertain a petition presented later than the time appointed by the standing orders, although expressly referred to them by a vote of the House.

If a petition contain the requisite matter to constitute a *locus standi*, it cannot be vitiated by any other matter, and indeed the *locus standi* being established, parties are often heard on questions of consequential damage, &c., which would of themselves have afforded no *locus standi*. Unless, however, the petition allege that which constitutes a *locus standi*, a petitioner will not be heard, whatever be the merits of his case. This was distinctly decided in a committee of the Lords in the matter of the Syston and Peterborough Railway, Lord Devon, chairman, where it was held that a canal company included in the schedule to the act, whose lands were cut through, but whose petition omitting this, alleged an intention of the railway company to dry up another canal, thereby consequentially injuring them, had no *locus standi*.



### *Of the Evidence admissible in opposition to a Railway Bill.*

It has been before remarked, that committees usually profess to be guided by the rules of legal evidence, but do not in practice very strictly observe them. Those things of which it is most important to satisfy committees, have been before noticed, and the general evidence will be very much what would be required to prove the same things before a Court of law.

In addition to strictly legal evidence, a good deal of hearsay is generally admitted to be taken by the committee *pro tanto*; for example,—it is usually allowed to question a witness as to the state of feeling in the neighbourhood about the railway, &c.

Competing opposite lines produce their plans and sections, and go into any evidence they think proper in favour of their own line, and against their opponents. Generally, also, those schemes which are allowed a *locus standi* only as opponents

are permitted to avail themselves of the plans and sections which they have deposited.

By what evidence a landowner is allowed to oppose a railway, has been, and remains to some extent, a disputed question.

It has been a long established rule, that it is competent for a landowner in opposing a railway bill, to bring evidence not only of the extent to which the railway will be likely to injure him, but of the possibility of the line being carried in some other direction with less inconvenience to him, and greater benefit to the public. Indeed, unless a landowner be prepared with evidence on the latter point, his opposition to the preamble of the bill will generally be of little avail. The mooted question has been, whether he is confined to general evidence of the advantages of such a proposed line, or whether he is entitled to put in plans and sections of his own, showing the engineering and other details of it, or, in the event of such plans and sections being already before the committee, he is entitled to use them for his purpose. Plans and sections of his own which have not been deposited, have been objected to, (it is believed in all cases successfully,) on the ground of the other party being taken by surprise, and unable to take steps for ascertaining their correctness: whereas opportunity for testing the plans and sections of the company, is afforded by the publicity of them required by the standing orders. It commonly happens, however, that where a landowner opposes the preamble of a bill, there is a company or project in the back ground, who have deposited their plans and sections, but for some reason or another do not think fit to appear.

In committee Group V, The O'Conner Don chairman, the Duke of Devonshire was allowed to show by plans and sections which had been deposited by a company who did not appear that the line might be carried more conveniently through another part of his lands. On the other hand, it has been many times decided that general evidence only in such cases is admissible. There was, however, a decision by a committee presided over by Mr. Bowes, to the effect that landowners petitioning may be allowed to show generally though not by plans and sections, that a better engineering line may be made, and moreover, to give evidence that a *bond fide* project exists, intending to bring it before Parliament, the promoters of which have been provisionally registered, although they have not applied to Parliament. It may be considered settled by the practice of this year that a landowner is confined to *general evidence* of a better line.

It is necessary, however, that the new line, whether indicated by general or particular evidence, should be conterminous, at least substantially so, with the line opposed. This question, among others, was discussed at great length before committee Group N, Mr. Macaulay chairman, when it was proposed to show in opposition to the West Cornwall Railway, between Plymouth and Falmouth, that a line more beneficial to the public, and less

injurious to the opposing landowners, might be carried through the centre of Cornwall, from Exeter to Falmouth, and it was proposed to show this by plans and sections deposited by persons styling themselves The Central Cornish Railway Company. It was argued, moreover, that the West Cornwall line was but an extension of the South Devon line between Exeter and Plymouth. All evidence of such a line, both general and by plans and sections, was rejected, partly on the ground (it is understood) that to allow such evidence would be to permit a company to advance their project indirectly, when they had not chosen to do so directly, and partly because the line set up was not conterminous with the opposed line.

On appeal to the Speaker this decision was confirmed, on the ground solely that the line set up was not conterminous with the opposed line. This may be the proper place to refer to a recent decision in a committee of the House of Lords, where it was held, that landowners appearing there for the first time to oppose the Southampton and Dorchester Railway, might set up, not by plan and section, but by general evidence, a line from Dorchester to Salisbury, and thence to Southampton, which had been projected by a company which did not appear, on the ground (it is presumed) that the line, though devious, is substantially between the same termini.

It should be remembered that no ground of opposition will be allowed to be gone into which has not been specified in the petition, unless the committee direct that the petition be amended — it will not be competent, for instance, for an opposing party to impeach the correctness of the plans and sections of the company, unless he have given notice of his intention to do so in the petition; according to strict rule, such objections should be taken before the Standing Orders Committee; where, however, it comes out in the course of the evidence of a witness for the company, that the plans or sections are incorrect, advantage may be taken of such incorrectness by the other side, though their petition has not referred to them. So at least it was decided in the matter of the Cambridge and Lincoln Railway, Lord Courtenay, chairman. It was also there decided that the preamble of a bill being reported against, in consequence of its appearing that the line could not be carried into effect in accordance with the plans and sections deposited in the Private Bill Office, a committee may yet entertain the line in the shape of a project.

Whether or not defects apparent on the face of plans and sections—as, for example, where two lines represented to be equal, are found by compasses not to be so—may be taken advantage of without notice in the petition, is questionable. This point arose before the committee presided over by Mr. Beckett Denison—it was contended that such an objection ought to have been taken before the Standing Orders Committee; that at least it ought to

have appeared in the petition ; if, however, the objection were not then too late, that it rested on the opponents of the bill to shew that the sections deposited in the Private Bill Office were true copies of those deposited with the clerks of the peace (the company being bound to make the railway only in pursuance of the plans and sections *deposited with the clerks of the peace*;) the opponents of the bill however were allowed to show *de bene esse* the difficulties that would arise if the sections before the House were correct, and in the mean time application was made to the clerks of the peace to inspect the original sections. It being discovered that an error had been made by the engraver in the section before the House, from which alone the difficulty arose, the objection was put an end to.



### *Of the Order and Mode of Proceedings on opposed Bills.*

If more than one opposed Bill be referred to the committee, the committee will usually adopt any agreement which may have been come to among the respective parties as to the order of precedence, and if no such agreement have been come to, will settle the question without hearing arguments from counsel ; generally speaking, bills will be taken in the order in which they have been read a second time. With respect to competing lines, the grouping system having reference to territory as well as competition, it is obviously possible that all the competing lines referred to a committee, may not compete with one another. The competing lines therefore are subdivided, if necessary, into subordinate groups of lines competing *inter se*.

With regard to the order in which these groups are taken, no rule can be laid down ; with regard however to each of the bills in each group the order of the second reading is observed.

The case for the promoters of the bill is opened by the senior counsel who, though required by the rules to restrict himself to a statement of facts, is in practice allowed considerable latitude in his observations with reference both to his own and to rival schemes ; landowners and other opponents are heard next, and have the option of making their speech at the opening or close of their evidence, but not at both, as was formerly the practice.

In one case it was decided that where the counsel for a landowner stated facts but did not call evidence, the counsel for the bill had no right to reply ; this however is believed to be an exceptional decision. Where the counsel for the landowner confines himself to observations on the evidence for the bill, the counsel for the bill has no right to the reply, a statement of facts, however, whether they be proved or not, it is submitted ought to entitle him to it.

In one other case, where after the promoters of the bill had closed their evidence, a landowner proved their plans and sections to be grossly incorrect, they were allowed to put in other plans and sections: this may probably be also considered as an exceptional decision.

In the case of two or more lines competing *inter se* the practice of committees has been by no means uniform.

Some committees have decided on the preamble to the first bill before considering the preambles of any others, then on the second *per se*, and so on: the competing lines giving in evidence against the preamble of first bill, the greater part if not all of their own case. If the preamble of the first has been approved of, the inquiry has ended; if disapproved, the promoters of the second project have been next heard in support of their own case, and the greater part of their evidence being necessarily already before the committee, have been commonly requested not to go through it again, but merely to add what new matter they may have or become possessed of. Landowners and other opponents have been next heard against this scheme, and then the promoters of other competing lines, both those whose preamble has been rejected and those who have had preambles to bring forward. In some cases, after the evidence against project No. 1 has been gone through as described, such committees have deferred their decision until they have heard the evidence in favour of the preambles of Nos. 2, 3, &c.

The great majority of committees have adopted a plan apparently better calculated for the despatch of business, *viz.*: that of hearing the evidence in favour of the preambles of all the competing lines before deciding between them. Under this practice the promoters of each line opposing that whose case is first stated, give their evidence both against No. 1 and in favour of their own preamble at the same time; and after the successive opposing schemes have brought forward their evidence, No. 1 has the general reply.

Thus, should there be only two competing lines, No. 1 states his case—landowners, if any, cross-examine first, next No. 2 and then No. 1 re-examines. No. 2 brings forward his case, and if no evidence be given in opposition to him he has but one speech. No. 1 then replies and the matter is finished.

If however, landowners appear to oppose No. 2 he has the right to reply to them.

It is also generally allowed to No. 1 if No. 2 brings forward new facts, to bring evidence to rebut them, upon which No. 2 has the right to reply, and No. 1 then replies generally.

If there be a No. 3 or No. 4 by the same principle Nos. 2 and 3 as well as No. 1, have a right to appear again in the field a second time with evidence to rebut each successive scheme—each successive scheme replies, the last first and the first last.

With respect to all these rules, however, it should be said that the practice is modified in each particular case to suit the convenience of the committee and the parties.

The following is the report from the Select Committee appointed to inquire whether, without discouraging legitimate enterprise, conditions may not be embodied in Railway Acts, better fitted than those hitherto inserted in them to promote and secure the interests of the public :

1. That it is expedient that a department of the executive government, so constituted as to obtain public confidence, be established for the superintendence of railway business.
2. That all proposals for the construction of new lines of railway or for extensions or branches of existing lines, or for the amalgamation of lines already authorized with other lines, or with canals, or for leasing railways or canals to Railway Companies, or for any other purposes relating to railways for which the sanction of Parliament is required, together with plans, sections, books of reference, and other papers required by the Standing Orders, should be laid before such department.
3. That the department should test those plans, sections, &c., through its own engineers and officers, by means of local examination or otherwise, as it may think fit, and should inquire into and report to Parliament upon the particulars required by the Standing Orders to be specially reported upon by committees on Railway Bills; and that no committee on any Railway Bill should inquire further into such particulars, unless by the special order of the House.
4. That this department should also inquire into the compliance with the Standing Orders, and how far the same, if not complied with, in any particular cases, ought to be dispensed with, and should report thereupon to Parliament.
5. That the department should receive representations from local bodies, or from individuals, for or against any proposed line, whether such representations have reference to matters of public or private interests, and should hear the parties, and should make such inquiries on the spot, or otherwise, as they may think necessary, and should report the facts, and their opinions thereupon, to Parliament.
6. That the department should report in each case what in its judgment would be a proper tariff of fares and charges.
7. That all Bills for effecting the objects enumerated in the foregoing resolution should be submitted to the department for examination and approval; and, that it should be part of the duty of the department to enforce uniformity in the preparation of such Bills, as far as circumstances will allow.



8. That no Bill for carrying any such proposal into effect should be introduced into Parliament, without having the previous sanction of such department.
9. That the department should be charged with a general supervision of all railways and canals, in any way connected with railways, and that for this purpose it should possess all the powers, and execute all the duties now possessed and exercised by the Board of Trade, and such additional powers as may be necessary to enforce any regulations made from time to time for the accommodation and interests of the public.
10. That the department should require from every Railway Company periodical returns, according to an uniform plan approved from time to time by the department, and that it should annually lay before Parliament a report, giving the above returns, or abstracts thereof, together with such details and observations upon the state and progress of the railway system as it may deem useful.

*August 7th, 1846.*

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*Friday, July 17th, 1846.*

## HOUSE OF LORDS.

### THE GAUGES.

The following resolutions, which had formerly been adopted by the House of Commons, were agreed to :—

1. That no line of railway should hereafter be formed on any other than the 4 feet 8½ inches gauge, excepting lines to the south of the existing line from London to Bristol, and excepting small branches of a few miles in length, in immediate connection with the Great Western and South Wales Railways ; but that no such line as above excepted should be sanctioned by Parliament, unless a special report shall have been made by the Committee on the Bill, setting forth the reasons, which have led the Committee to advise that such line should be formed on any other than the 4 feet 8½ inches gauge.
2. That provision should be made by law to prevent the directors of any railway company from altering the gauge of such railway.
3. That in order to complete the general chain of narrow gauge communication from the north of England to the southern coast, and to the port of Bristol, and also from Oxford to Basingstoke, or by any shorter route connecting the proposed Rugby and Oxford line with the South Western Railway, without prejudice, however, to the formation of any other line, also connecting upon an uniform gauge, and by a direct route, the north of England with the southern coast, it is expedient, that the South Wales line and its branches to Monmouth and Hereford should be formed on the broad gauge.
4. That it is not expedient to alter the provisions of the acts for forming a line of Railway from Rugby to Oxford, and for forming a line of railway from Oxford to Worcester and Wolverhampton, with respect to the gauge on which they may be formed, or with respect to the powers therein conferred on the Board of Trade.

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*Tuesday, August 19th, 1846.*

Mr. Morrison moved the confirmation of nine resolutions reported from the select committee on railways, (on the 7th of August, 1846, see the report, *ante*.) The first alone,

ver, was agreed to, on the ground that government about to bring in a bill which would embody or carry the rest. The resolution adopted was as follows : That expedient that a department of the executive government, so constituted as to obtain public confidence, be established for the superintendence of railway business.

On the 19th of August, 1846, the Chancellor of the Exchequer brought in a bill in accordance with the above resolution, and empowering Her Majesty to constitute a Railway Board.

*(See Act in Addenda.)*

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# ADDENDA.

7 & 8 VICT. CHAP. 110.

*Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.* [5th September, 1844.]

Whereas it is expedient to make provision for the due registration of Joint Stock Companies during the formation and existence thereof; and also, after such complete registration is hereinafter mentioned, to invest such companies with the liabilities and incidents of corporations, with some modifications, and subject to certain conditions and regulations; and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of this act; now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that this act shall come into operation at the following times; that is to say, as to the officers to be appointed in pursuance hereof for the registration of companies, and the regulation of the office hereby provided for that purpose, immediately on the passing hereof; and as to all companies to which this act is to apply, and all other provisions hereinafter contained, except such as relate to such officers and office as aforesaid, on the first day of November in the year one thousand eight hundred and forty-four.

Operation of act as to time.

11. And be it enacted, that this act shall apply to every Joint Stock Company, as hereinafter defined, established in any part of the united kingdom of Great Britain and Ireland except Scotland or established in Scotland, and having an office or place of business in any other part of the united kingdom, for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except banking companies, schools, and scientific and literary institutions, and also

Operation of act as to companies.

**Application of term "Joint Stock Companies."** friendly societies, and loan societies, and benefit building societies, respectively duly certified and enrolled under the statutes in force respecting such societies, other than such friendly societies as grant assurances on lives to the extent hereinafter specified;) and that the term "Joint Stock Company" shall comprehend—

Every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the copartners; and also,

Every assurance company, or association for the purpose of assurance or insurance on lives, or against any contingency involving the duration of human life, or against the risk of loss or damage by fire, or by storm, or other casualty, or against the risk of loss or damage to ships at sea or on voyage, or to their cargoes, or for granting or purchasing annuities on lives; and also every institution enrolled under any of the Acts of Parliament relating to friendly societies, which institutions shall make assurances on lives, or against any contingency involving the duration of human life, to an extent upon one life or for any one person to an amount exceeding two hundred pounds, whether such companies, societies, or institutions shall be Joint Stock Companies, or Mutual Assurance Societies, or both, and also,

Every partnership which at its formation, or by subsequent admission (except any admission subsequent on devolution or other act in law), shall consist of more than twenty-five members.

**Future companies.** And that, except where the provisions of this act are expressly applied to partnerships existing before the first day of November, (a) it shall be held to apply only to partnerships the formation of which shall be commenced after that date; provided nevertheless that except as hereinafter specially provided, this act shall not extend to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament; provided also, that except as hereinafter is specially provided, this act shall not extend to any company incorporated, or which may be hereafter incorporated, by statute or charter, nor to any company authorised, or which may be hereafter authorised, by statute or letters patent, to sue and be sued in the name of some officer or person.

**Companies for executing Parliamentary works.**

**Incorporated companies.**

(a) A railway company was incorporated by an act passed before the 1st of November, 1844. Subsequently to that day the company resolved to make an extension line, and on the 30th of July, 1845, they obtained an

act for that purpose. The latter undertaking was held not to be a partnership, the formation of which was commenced after the 1st of November, 1844, within the meaning of section 2 of 7 & 8 Vict., c. 110. *Shaw v. Holland*, 4 Railway Cases. 150; 15 L. J., N. S. Exc. 87.—It will be seen that by the second section the act is to apply only to companies “established” in any part of Great Britain and Ireland (except Scotland), and it has been made a question whether the fact of an office being established in this country, although the works were carried on in another, brought the company within the act. No judicial decision has yet been given on this point; but the East Indian Railway Company submitted a case respecting it to eminent counsel, who were of opinion that a company existing under such circumstances was within the act. It has been thought advisable to give the case and opinions, and they will be found in the Addenda.

III. And be it declared, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by context or by the nature of the subject matter; that is to say,—

Construc-  
tion of  
words.

The word “company” to mean any Joint Stock Company or other institution, as before defined :

The expression “assurance company” to mean any assurance company, association, or institution, as before defined :

The word “directors” to mean the persons having the direction, conduct, management, or superintendence of the affairs of a company :

The expression “promoter,” or “promoter of a company,” to apply to every person acting by whatever name in the forming and establishing of a company at any period prior to the company obtaining a certificate of complete registration as herein-after mentioned :

The word “subscriber” to mean any person who shall have agreed in writing to take or have taken any shares in a proposed company, or in a company formed, and who shall not have executed the deed of settlement, or a deed referring thereto :

The word “shareholder” to mean any person entitled to a share in a company, and who has executed the deed of settlement, or a deed referring to it, or in the case of mutual assurance societies, any person who shall be an assured member thereof :

The word “person” to apply to bodies politic or corporate, whether sole or aggregate :

The expression “commissioners of the treasury” to apply to

the Lord High Treasurer for the time being, or the commissioners of her Majesty's treasury for the time being, or any three or more of them :

The expression "committee of privy council for trade" to mean the lords of the committee of her Majesty's privy council for the consideration of all matters of trade and plantations :

The expression "secretary of the committee" to mean one of the joint assistant secretaries of the said committee of privy council for trade :

The word "justice" to mean a justice of the peace for the county, city, borough, liberty, or place where the matter requiring the cognizance of any justice shall arise, and who shall not be interested in the matter :

The expression "special authority" to mean any deed of settlement, bye-laws, letters patent, charter or local and personal act of Parliament, by which powers are conferred or regulations prescribed with reference to any individual company :

The word "prescribed" to mean provided for by the special authority :

The word "month" to mean calendar month :

The expression "superior courts" to mean her Majesty's superior courts of law or equity in England or Ireland :

The word "occupation," when applied to any person, to mean his trade or following, and, if none, then his rank or usual title, as esquire, gentleman :

The expression "place of residence" to include the street, square, or place where the party shall reside, and the number, (if any), or other designation of the house in which he shall so reside :

The word "oath" to include affirmation or other declaration lawfully substituted for an oath :

And generally, whensoever, with regard to any matter, or to any function in respect thereof, the name of an officer (whether a public officer or an officer of a company) ordinarily having cognizance of such matter, or ordinarily exercising such function, is mentioned, such reference is to be understood to apply as well to any other person or officer who may have cognizance of such matter, or exercise such function in respect of such matter :

And, subject as aforesaid to the context and to the nature of the subject matter, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender :



whether by way of prospectus, handbill, or advertisement, intention or proposal to form any company for any purpose in the meaning of this act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, it shall be the duty of the promoters of such company, and they or some of them are hereby required to send to the office hereby provided for the registration of Joint Stock Companies (and herein-after called the registry office) Returns by promoters of companies.

of the following particulars according to the schedule hereunto annexed : that is to say,

1. The proposed name of the intended company ; and also,
2. The business or purpose of the company ; and also,
3. The names of its promoters, together with their respective occupations, places of business (if any), and places of residence ;

and also the following particulars, either before or after such publication as aforesaid, when and as from time to time they shall be decided on ; viz.

4. The name of the street, square, or other place in which the provisional place of business or place of meeting shall be situate, and the number (if any) or other designation of the house or office ; and also,
5. The names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member or promoter whose agreement it purports to be (but such agreements need not be on a stamp) ; and also,
6. The names of the officers of the company and their respective occupations, places of business (if any), and places of residence ; and also,
7. The names of the subscribers to the company, their respective occupations, places of business (if any), and places of residence ; and also, before it shall be circulated or issued to the public.
8. A copy of every prospectus or circular, handbill or advertisement, or other such document at any time addressed to the public, or to the subscribers or others, relative to the formation or modification of such company :
9. And afterwards, from time to time, until the complete registration of such company, a return of a copy of every addition to or change made in any of the above particulars :

that upon such registration of at the least the three parti- Certificate.

particulars first before mentioned the promoters of such company shall be entitled to a certificate of provisional registration.

**Penalty as to delaying registration** V. And be it enacted, that if for a period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, the promoter of such company fail to register such particulars, then, on conviction thereof, any promoter as aforesaid shall be liable to forfeit for every such offence a sum not exceeding twenty pounds.

**Relief from penalties by the appointment of a solicitor.** VI. Provided always, and be it enacted, that if the promoters of a proposed company appoint a person, being an attorney or solicitor of one of her Majesty's superior Courts of Equity, to be solicitor for the promoters of such company, he shall return to the said registry office a duplicate of such particulars, in writing, signed by some one or more of such promoters, together with a duplicate of the acceptance of such appointment, signed by the person so appointed, then, until a certificate of the revocation or of the resignation of such appointment is returned in like manner, so signed as aforesaid, or until the appointment ceases, all returns by this act required to be made by such promoters shall be made by such solicitor on their behalf, and the penalty herein-before imposed in respect of failure to make such returns shall not be incurred by them; and that if within the period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, such solicitor fail to make such returns, then he shall be liable to forfeit for every such offence a sum not exceeding twenty pounds; and that if it be proved to appear to the court to which he shall belong that he negligently omitted to make a return of any such particulars, he shall be liable to be suspended from practice for any time appointed by the said court, or to be struck off the rolls of the said court.

**Return of appointment and acceptance.**

**Penalty on solicitor.**

**Complete registration** VII. And be it enacted, that it shall not be lawful for any Joint Stock Company hereafter to be formed for any purpose, whether for executing or for any other work as aforesaid under the authority of Parliament, or for any other purpose, to act otherwise than provisionally in accordance with this act until such company shall have obtained a certificate of complete registration as hereinafter provided; and every such Joint Stock Company shall be entitled to receive a certificate of complete registration unless it be formed by some deed or instrument under the hands and seals of the shareholders therein, or by such deed there must be appointed not less than three directors, and also one or more auditors; and such deed or instrument shall set forth in a schedule thereto, in a tabular manner, according to the order hereinafter mentioned, the following particulars, to wit, to say,

**Constitution of companies.**

**Provisions of deeds of settlement.**

name of the company ; and also,  
 business or purpose of the company ; and also,  
 principal or only place for carrying on such business,  
 every branch office (if any), and also,  
 amount of the proposed capital, and of any proposed  
 additional capital, and the means by which it is to be  
 raised ; and where the capital shall not be money, or  
 will not consist entirely of money, then the nature of  
 the capital and the value thereof shall be stated ;  
 also,

amount of money (if any) to be raised or authorized  
 to be raised by loan ; and also,

total amount of the capital subscribed or proposed to  
 be subscribed at the date of such deed ; and also,

division of the capital (if any) into equal shares, and  
 total number of such shares, each of which is to be  
 distinguished by a separate number in a regular series ;

also,

names and occupations and (except bodies politic)  
 places of residence of all the then subscribers, ac-  
 cording to the information possessed by the officers of  
 the company in respect of such names and occupations  
 and places of residence ; and also,

number of the shares which each subscriber holds,  
 the distinctive numbers thereof, distinguishing the  
 numbers of the shares on which the deposit has been  
 made from those on which it has not been paid ; and

names of the then directors of the company, and of  
 the then trustees of the company (if any) and of the  
 auditors of the company, together with their re-  
 spective places of business (if any), occupations, and  
 places of residence ; and also,

duration of the company, and the mode or condition  
 of its dissolution.

Such deed must contain a covenant on the part of the  
 shareholder, with a trustee on the part of the company, to pay instal-  
 ments.

amount of the instalments on the shares taken by  
 the shareholder, and to perform the several engagements in  
 the deed contained on the part of the shareholders ; and that  
 the deed must also make provision for such of the purposes set  
 forth in schedule (A.) to this act annexed as the nature and  
 purposes in the company may require, and either with or without  
 schedule (A.) for such other purposes (not inconsistent with law) as  
 the court may think proper ; and that every such  
 deed must be signed by at least one-fourth in  
 the persons who at the date of the deed have become  
 shareholders, and who shall hold at least one-fourth of the  
 number of shares in the capital of the company ; and

Provision in  
 deed for  
 purposes in  
 schedule

Execution  
 of deed of  
 settlement.

Authenti-  
 cation.

Registra-  
tion of deed

that every such deed must be certified by two directors of the company, by writing endorsed thereon in the form contained in the schedule (B.) to this act annexed; and that on the production of such deed, setting forth such matters and making such provisions as are hereby required to be provided for, and being so signed and certified, together with a complete abstract or index thereof, to be previously approved by the registrar of Joint Stock Companies, and also a copy of such deed, for the purpose of registering the same, or as soon after such production as conveniently may be, the registrar of Joint Stock Companies shall grant a certificate of complete registration, according to the provisions of this act in that behalf; and unless such deed and other matters be so produced, and such conditions be so performed, it shall not be lawful for him to grant such certificate; and that after such certificate shall be granted it shall be taken as evidence of the proper provisions being inserted in such deed, and of the performance of the conditions hereby required previously to the granting such certificate of complete registration; and that any defect or omission as regards the matters hereby required in any deed of settlement may from time to time be supplied by a supplementary deed or deeds; and that if any such supplementary deed be not inconsistent with or repugnant to this act, or any act respecting Joint Stock Companies, and if it be duly registered, then it shall have the same effect as if there were only one deed for the purposes of this act; and that unless the same shall be registered it shall be of no force or effect.

Supple-  
mentary  
deed.

Notification  
of incom-  
pleteness of  
deeds of  
settlement.

VIII. And be it enacted, that if any deed of settlement or supplementary deed of settlement, whether made before or after the granting of the certificate of complete registration, appear to such registrar of Joint Stock Companies to be insufficient by reason of the omission or incompleteness of any of the provisions therein contained for the purposes set forth in the said schedule (A.), or if the deed contain provisions which appear to such registrar to be inconsistent with or repugnant to this act, or any act for the time being in force respecting Joint Stock Companies, then as soon thereafter as conveniently may be such registrar shall notify the same in writing to the persons or to the company by whom the deed shall have been presented for registration, specifying in such notification the particulars wherein such deed of settlement or supplementary deed of settlement is incomplete, or inconsistent with or repugnant to any such act as aforesaid.

Companies  
for execut-  
ing Parlia-  
mentary

IX. Provided always, and be it enacted, that if any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution

without the authority of Parliament, deposit at the proper offices of the two houses of Parliament, in compliance with the standing orders of such houses respectively, and at or within the time required by such standing orders, such deeds of partnership or subscription contracts as shall be required to be deposited by such standing orders, and also return to the said registry office a copy of such deeds of partnership or subscription contracts, together with such certificate of the receipt of such plans, sections, and books of reference as shall be appointed by the said committee of privy council for trade, then it shall be lawful for the registrar of Joint Stock Companies, and he is hereby required to accept the same instead of the deed of settlement by this act required to be returned for the purpose of obtaining a certificate of complete registration; and thereupon such company shall be entitled to a certificate of complete registration accordingly.

works to register copies of documents required to be deposited by the standing orders.

Certificate of complete registration

X. And be it enacted, that throughout the continuance of any Joint Stock Company completely registered under this act, except such companies as shall have been incorporated by act of Parliament after complete registration, and within one month after the date of any new or supplementary deed of settlement, there shall be transmitted by the directors of every such company to the registrar of Joint Stock Companies a copy of such new or supplementary deed of settlement, together with a complete abstract thereof so approved of as aforesaid; and within six months after any change shall have taken place in any of the particulars herein-before required to be set forth in the schedule to the deed of settlement, except so far as respects the shareholders thereof and their respective shares, there shall be transmitted returns of such particulars, so far as the same shall have been changed; and if within such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds.

Further registration.

Returns of further deeds and changes.

Penalty.

XI. And be it enacted, that in the months of January and July in every year the directors of every Joint Stock Company completely registered under this act, except companies which shall have been incorporated by act of Parliament after complete registration, shall make or cause to be made the following returns to the registrar of Joint Stock Companies; namely,

Half-yearly returns of changes and additions of members.

A return according to the schedule (E) hereunto annexed, and containing the particulars therein set forth, of every transfer of any share in such company which shall have been made since the preceding half-yearly return (or, in the case of the first of such returns made by such company since the complete registration thereof), and which shall have come to the knowledge of the directors :

And also a return according to the schedule (F.) hereunto annexed, and containing the particulars therein set forth, of the names and places of abode of all persons who shall either have ceased to be shareholders of such company, or have become shareholders of such company otherwise than by a transfer as aforesaid, since the preceding half-yearly return, or since the complete registration of the company, as the case may require, and also of the changes in the names of all shareholders of such company, whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the complete registration of the company as the case may require :

**Penalty.** And if within any such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds.

**Returns made by request.** XII. And be it enacted, that if at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly ; and that on proof of such transfer and such request to the satisfaction of the registrar of Joint Stock Companies it shall be lawful for any such party to make a return of such transfer, which shall be received, marked, and registered, and with the same effect, as hereby provided in the case of returns made by such companies.

**Non-registration of shares transferred.** XIII. And be it enacted, that until the return of the transfer or other fact or event whereby a person becomes the holder of any shares be made, pursuant to the provisions herein-before contained, it shall not be lawful for such company, its directors or officers, if such fact or event be known to them respectively, to pay to any such person any part of the profits of the concern, nor for any such person to sue for or recover any part of the profits arising in respect of such share, or in anywise to act as a shareholder ; and that until the return of the transfer of any share shall have been made pursuant to the provisions herein-before contained the person whose share shall have been thereby transferred shall, so far as respects his liability to the debts and engagements of the company, and also as respects the reimbursement of any loss, damages, costs, and charges he may incur thereby, be deemed to continue a shareholder of such company.

**Periodical registration of companies.** XIV. And be it enacted, that annually in the month of January in every year every company completely registered under this act, except companies which shall have been incorporated by Act of Parliament after complete registration, shall make to the said registry office a return of the name and business of the company ; and that on the receipt of such return the registrar of Joint Stock Companies shall give a certificate thereof ; and that

if within the further period of one month such return be not made, then on conviction thereof, such company shall be liable to pay a sum not exceeding twenty pounds: Provided always, **Penalty.** that it shall be lawful for the lords of the said committee, on the application of any company, to appoint any other period of the year for the making of such annual return as aforesaid.

XV. And be it enacted, that when the particulars and documents severally by this act required to be returned to the said registry office shall have been so returned, it shall be the duty of the said registrar of Joint Stock Companies, and he is hereby required to cause to be written on every such document and return of particulars brought to him for registration the day of the receipt thereof, and to cause to be marked on every such return or document in writing or otherwise, a number denoting the order in which the same was received, and also, upon demand, to cause an acknowledgment of the receipt of such return or document to be given to the person by whom the same shall be so brought; and that if such returns or documents be conformable to the provisions of this act, or of any regulations in that behalf then it shall be the duty of the registrar and he is hereby required forthwith to register the same, and, on demand to grant to such company a certificate of provisional or complete registration, as the case may require, signed by him, and sealed with the seal of his office; which certificate must set forth whether the company has been constituted provisionally or completely; and that, in the absence of evidence to the contrary, any such certificate, or a copy of any such return as aforesaid, shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto. **Returns generally; evidence of registration.** **Certificates of registration.** **Effect of certificate as evidence.**

XVI. And be it enacted, that until the company shall have obtained its certificate of complete registration the promoters of the company, or their solicitor as aforesaid, shall make or cause to be made every return by this act required to be made; and after such company shall have obtained a certificate of complete registration the directors of the company shall make or cause to be made every such return; and one or more of such promoters, or their solicitor, or such directors as the case may be, shall sign such return; and every such return which shall be made after complete registration of the company shall be sealed with the seal of the company. **Authentication of returns.**

XVII. And be it enacted, that if the committee of privy council for trade shall deem it expedient, then it shall be lawful for the said committee and they are hereby authorised from time to time to make regulations respecting the form of any such returns as are hereby directed to be made, and the manner and time of making them, and for those purposes to alter and vary the schedules annexed to this act, and to dispense with any of **Regulations returns.**

the returns hereby made necessary, or any of the forms of returns prescribed by this act ; and that every such regulation shall be published in the *London Gazette*, and thereupon shall be of the like force as if the same were contained in this act : provided always, that nothing herein contained shall be construed to permit the said committee to make any such regulations which shall not apply alike to all such companies as may be registered under the authority of this act, so far as the same may be applicable to them.

**Regulations to apply to all companies.** XVIII. And be it enacted, that every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said registrar of Joint Stock Companies ; and that there shall be paid for such inspection such fees as may be appointed by the commissioners of her Majesty's treasury in that behalf, not exceeding one shilling for each such inspection ; and that any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said registrar ; and there shall be paid for such certified copy or extract such fee as the commissioners of her Majesty's treasury may appoint in that behalf, not exceeding sixpence for each folio of such copy or extract : and that in all courts of law and equity and elsewhere every such copy or extract so certified shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

**Inspection of returns at registry office.** XIX. And be it enacted, that it shall be lawful for the committee of privy council for trade and they are hereby empowered to appoint a person to be and to be called the registrar of Joint Stock Companies, and, if the said committee see fit, an assistant registrar, clerks, and other necessary officers and servants ; and that every such registrar and assistant registrar, clerks, and officers, shall be entitled to hold their offices during the pleasure only of the said committee ; and that from time to time it shall be lawful for the commissioners of her Majesty's treasury and they are hereby authorized to fix the salary or remuneration of such registrar, assistant registrars, clerks, officers, and servants ; and that, subject to the provisions of this act, it shall be lawful for the said committee of privy council for trade, and they are hereby authorized to make rules for regulating the execution of the office of the said registrar ; and that such registrar shall have a seal of office to be by him used in the authentication of all matters relating to his said office in respect of which such authentication is by this act required ; and that such assistant registrar shall, in the absence of the registrar, be competent to do all things which the registrar is authorized or empowered, directed, or required to do, as fully and effectually, to all intents and purposes, as the registrar himself may do ; and all provisions in this act relating to the signature and seal of office of the said

**Office for registration**

**Appointment of registrar.**

**Assistant registrar.**



registrar shall apply to the said assistant registrar: Provided always, that the registrar shall not be absent from the duties of his office, except on account of ill health or other urgent cause, without express leave in writing of the said committee of privy council for trade for that purpose previously obtained.

Leave of  
absence.

XX. And be it enacted, that from the hour of ten of the clock in the morning until five of the clock in the afternoon, and at such other times as the said committee of privy council for trade shall appoint, such registrar, or in the unavoidable, or, as aforesaid, permitted absence of the registrar, then such assistant registrar shall give his attendance at the said office every day throughout the year, except Sundays, Good Friday, Christmas Day, and any other general holiday or fast day appointed by her Majesty in council.

Registrar's  
office  
attendance.

XXI. And be it enacted, that every company shall pay the following fees; (that is to say,)

Fees of  
registration

For a certificate of provisional registration the sum of five pounds :

For a certificate of complete registration the sum of five pounds ; and one shilling additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority :

For an annual certificate the sum of one pound :

And also such other fees as shall be appointed to be paid in respect of any other services to be performed by the said registrar ; and that from time to time it shall be lawful for the commissioners of her Majesty's treasury, and they are hereby authorized, in addition to the fees herein-before required to be paid in respect of such certificates, to fix such other fees to be paid for the services to be performed by the registrar of Joint Stock Companies as they shall deem requisite to defray both the expenses of the said office and the salaries or other remuneration of the said registrar and of any other person employed under him, with the sanction of the said commissioners of her Majesty's treasury, in the execution of this act ; and that the balance, if any, shall be carried to the consolidated fund of the United Kingdom of Great Britain and Ireland, and be paid accordingly into the receipt of her Majesty's exchequer at Westminster ; and that it shall be lawful for the said commissioners of her Majesty's treasury to regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for : Provided always, that if within two years after a company shall have obtained a certificate of complete registration such company shall obtain an act for the incorporation thereof, then three-fourths of the fee paid by or on behalf of such company on such complete registration in respect of the capital of

Commis-  
sioners of  
treasury  
may fix  
other fees.

Balance to  
go to conso-  
lidated fund

Fees.

the company shall be reimbursed and repaid to the said company, and that it shall be lawful for the said commissioners of her Majesty's treasury and they are hereby authorized and empowered to repay the same accordingly.

**Extortion a misdemeanor.** XXII. And be it enacted, that if either the said registrar of Joint Stock Companies, or any person employed under him, either demand or receive any gratuity or reward in respect of any service performed by him, other than the fees aforesaid, then for every such offence every such registrar or person shall be guilty of a misdemeanour.

**On provisional registration.** XXIII. And be it enacted, that on the provisional registration of any company being certified by the registrar of Joint Stock Companies it shall be lawful for the promoters of any company so registered to act provisionally, but not for any longer period than twelve months from the date of the certificate, unless such certificate shall be renewed, which may be done on application for that purpose; and no such renewed certificate shall be in force for a longer period than twelve months from the date thereof; and it shall be lawful for the promoters of such company,—

**Effect of provisional registration.**

To assume the name of the intended company, but coupled with the words "registered provisionally;" and also,

To open subscription lists; and also,

To allot shares, and receive deposits by way of earnest thereon, at a rate not exceeding ten shillings for every one hundred pounds on the amount of every share in the capital of the intended company; and also, in the case of companies for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without the authority of Parliament, in addition to and exclusive of such sum of ten shillings *per* hundred pounds, such further sum *per* hundred pounds on the amount of every such share as may be required by the standing orders of either House of Parliament to be deposited before the obtaining of an act of Parliament for enabling the company to execute such work; and also,

To perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an act of Parliament;

But not to make calls, nor to purchase, contract for, or hold lands, nor to enter into contracts for any services, or for the execution of any works, or for the supply of any stores, except such services and stores or other things as are necessarily required for the establishing of the company, and except any purchase or other contract to be made conditional on the completion of the company, and to take effect after the certificate of

gistration, act of Parliament, or charter or letters  
l have been obtained, and, except in the case of com-  
-executing such works as aforesaid, contracts for ser-  
-king surveys and performing all other acts necessary  
-g an act of incorporation or other act for enabling  
-y to execute such works.

And be it enacted, that if before a certificate of pro-  
-istration shall be obtained, the promoters or any of  
-y person employed by or under them, take any mo-  
-sideration of the allotment either of shares or of any  
-the concern; or by way of deposit for shares to be  
-allotted; or issue, in the name or on behalf of the  
-any note or scrip, or letter of allotment, or other  
-or writing to denote a right or claim, or preference  
-absolute or conditional, to any shares; or advertise  
-ce or proposed formation of the company; or make  
-t whatsoever for or in the name or on behalf of such  
-ompany; then every such person shall be liable to  
-every such offence a sum not exceeding twenty-five  
-nd that it shall be lawful for any person to sue for  
-the same by action of debt.

Proceed-  
ings of com-  
panies be-  
fore regis-  
tration.

Penalty.

And be it enacted, that on the complete registration  
-ompany being certified by the registrar of Joint Stock  
-such company and the then shareholders therein,  
-succeeding shareholders, whilst shareholders, shall  
-hereby incorporated as from the date of such certifi-  
-name of the company as set forth in the deed of set-  
-nd for the purpose of carrying on the trade or busi-  
-uch the company was formed, but only according to  
-ons of this act, and of such deed as aforesaid, and for  
-e of suing and being sued, and of taking and enjoying  
-ty and effects of the said company; and thereupon  
-nts or engagements entered into by any of the share-  
-other persons with any trustee on the behalf of the  
-at any time before the complete registration thereof,  
-ceeded on by the said company and enforced in all  
-if they had been made or entered into with the said  
-fter the incorporation thereof; and such company  
-ue so incorporated until it shall be dissolved, and all  
-round up; but so as not in anywise to restrict the  
-any of the shareholders of the company, under any  
-decree or order for the payment of money which  
-tained against such company, or any of the members  
-any action or suit prosecuted by or against such com-  
-y court of law or equity; but every such shareholder  
-spect of such monies, subject as after mentioned, be  
-ue liable as he would have been if the said company

On com-  
plete regis-  
tration.  
Powers and  
privileges.  
Incorporation.

Without  
restriction  
or liability.

- MEMBERS IN NAME OF THE COMPANY ; and also
3. To sue and be sued by their registered names any claim by or upon the company upon or by whether a member of the company or not, if such claim may remain unsatisfied ; and also
  4. To enter into contracts for the execution of for the supply of the stores, or for any other purpose of the company ; and also,
  5. To purchase and hold lands, tenements, and in the name of the said company, or of a trustee thereof, for the purpose of occupying a place or places of business of the said company (but nevertheless with a license, general or special, for that purpose, to be granted by the committee or council for trade, first had and obtained, lands, tenements, and hereditaments as the business of the company may require ; and also
  6. To issue certificates of shares ; and also,
  7. To receive instalments from subscribers in amount of any shares not paid up ; and also,
  8. To borrow or raise money within the limitations by any special authority ; and also,
  9. To declare dividends out of the profits of and also,
  10. To hold general meetings periodically, and meetings upon being duly summoned for that purpose ; and also,
  11. To make from time to time, at some general meeting of the shareholders specially summoned for the purpose, laws for the regulation of the shareholders, directors, and officers of the company, such laws being repugnant to or inconsistent with the provisions of this act or of the deed of settlement of the company ; and also,

lity to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye-law; and also,

14. To appoint and remove one or more auditors, and such other officers as the deed of settlement under which the company shall be constituted may authorize:

Subject nevertheless, with respect to all such powers and privileges, to the provisions of this act, and subject also to the provisions of the deed of settlement of the company or any other special authority: Provided always, with regard to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament, that on the complete registration of any such company, and before such company shall have obtained its act of incorporation or other act whereby the authority of Parliament shall be granted for executing such work, it shall not be lawful for any such company or the directors or officers thereof to exercise the herein-before mentioned power to enter into contracts, otherwise than conditionally upon obtaining such act, or to exercise the power to purchase and hold lands as aforesaid, or to exercise the power to receive instalments from shareholders beyond the sum or per centage necessary to be deposited in compliance with the standing orders of either House of Parliament, or such other sum as may be requisite for obtaining the act of incorporation or other act for granting the authority of Parliament to execute such work, or to exercise the power to borrow money, as aforesaid, or to exercise the power to declare dividends, as aforesaid; and, subject to these last-mentioned exceptions, all the powers by this enactment herein-before given to any company completely registered, except the general power to perform all acts necessary for carrying on the business of the company, may be exercised as fully by any such company so completely registered, as by any other company so completely registered: provided always, that it shall be lawful for any such company to perform all acts which may be necessary for obtaining an act of incorporation or other act for obtaining the authority of Parliament to execute its works as aforesaid, any thing herein contained to the contrary notwithstanding: and that upon obtaining such act of incorporation or other such act as aforesaid, or at the time of the coming into operation of such act, as shall be thereby appointed, all the powers which any such company shall obtain by virtue of this act, and all the provisions and regulations of this act which shall apply to such company, shall cease and determine, except so far as shall be otherwise provided by such act of incorporation or other such act as aforesaid.

Restriction of powers of companies for executing Parliamentary works before obtaining an act.

Power to obtain act.

XXVI. And be it enacted, that no shareholder of any Joint Shareholders.

Restriction of rights prior to execution of deed of settlement. Rights thereafter.

Stock Company completely registered under this act shall be entitled to receive any dividends or profits, or be entitled to the remedies or powers hereby given to shareholders, until he shall have executed the deed of settlement of the said company, or some deed referring thereto, and also have paid up all instalments or calls due from him, and shall have been registered in the registry office aforesaid ; and further, that it shall be lawful for every shareholder who shall have signed such deed, and paid up such instalments or calls, and shall have been registered, and he is hereby entitled,—

To be present at all general meetings of the company ; and also,

To take part in the discussions thereat ; and also,

To vote in the determination of any question thereat, and that either in person or by proxy, unless the deed of settlement shall preclude shareholders from voting by proxy ; and also,

To vote in the choice of directors, and of every auditor to be elected by the shareholders :

Restriction on disposal of shares.

Certificates of shares.

Subject nevertheless to the provisions of this act, and of the deed of settlement of the company or other special authority, so far as such provisions shall either regulate or restrict the exercise of such powers, but not so as to deprive such shareholders thereof ; and further, with regard to subscribers and every person entitled or claiming to be entitled to any share in any Joint Stock Company (a), the formation of which shall be commenced after the first day of November, one thousand eight hundred and forty-four, that until such Joint Stock Company shall have obtained a certificate of complete registration, and until any such subscriber or person shall have been duly registered as a shareholder in the said registry office, it shall not be lawful for such person to dispose, by sale or mortgage, of such share, or of any interest therein, and that every contract for or sale or disposal of such share or interest shall be void, and that every person entering into such contract shall forfeit a sum not exceeding ten pounds ; and that for better protecting purchasers it shall be the duty of the directors of the company by whom certificates of shares are issued to state on every such certificate the date of the first complete registration of the company, as before provided : and that if any such director or officer knowingly make a false statement in that respect, then he shall be liable to the pains and penalties of a misdemeanor.

(a) It is now decided that this section does not apply to railway companies, who cannot carry their projects into execution without obtaining the authority of Parliament. *Young v. Smith*, 15 L. J., N. S., Exch. 81. *Lawton v. Hickman*. (June, 1846.) 10 Jurist, 543, ante App.

**XXVII.** And be it enacted, that with regard to the powers **Powers of**  
and duties of directors it shall be lawful for the directors of any directors.  
Joint Stock Company registered under this act,—

1. To conduct and manage the affairs of the company according to the provisions and subject to the restrictions of this act, and of the deed of settlement, and of any bye-law, and for that purpose to enter into all such contracts and do and execute all such acts and deeds as the circumstances may require ; and also,
2. To appoint the secretary, if any ; and also,
3. To appoint the clerks and servants ; and also from time to time, as they see fit,
4. To remove such secretary, clerks, and servants, and to appoint others, as occasion shall require ; and also,
5. To appoint other persons for special services as the concerns of the company may from time to time require ; and also,
6. To hold meetings periodically and from time to time as the concerns of the company shall require ; and also,
7. To appoint a chairman to preside at all such meetings, and in his absence to appoint a chairman at each such meeting ;

subject nevertheless to the provisions and restrictions of this act, and to the provisions of the deed of settlement of the company other special authority, but not so as to enable the shareholders to act in their own behalf in the ordinary management of the concerns of the company otherwise than by means of directors ; provided always, that it shall not be lawful for the directors to purchase any shares of the company, nor to sell any such shares, except shares forfeited on the nonpayment of calls or instalments, nor to lend to any one of their number, or to any officer of the company, any money belonging to the company without the authority and sanction of a general meeting of shareholders duly convened. **Restriction as to lending money.**

**XXVIII.** And be it enacted, that henceforth, notwithstanding Qualification of directors. &c.  
any thing to the contrary in any deed of settlement or other instrument by which a Joint Stock Company shall be constituted or regulated, it shall not be lawful to appoint any person to be to act as a director, whether honorary or otherwise, or to hold the office of patron or president, or any other office of the like description ; nor shall it be lawful for any person to act in any such capacity unless at the time of such his appointment or such his acting he hold in his own right at least one share in the capital of such company ; and that if, without having such share, any person be or become or act as director, patron, or resident of such company, or in any office of such or the like nature, then he shall forfeit for every such offence a sum not exceeding twenty pounds ; and that if any person be announced or

held out by or on behalf of the company, as a director, patron, or president, or as holding any office of such or the like description, without having so consented or acted, then each director of such company knowingly concurring in such representation shall forfeit a sum not exceeding twenty pounds.

Disqualifi-  
cation of  
directors.

As to con-  
tracts.

Approval of  
general  
meeting of  
share-  
holders, &c.

As to shares,  
&c.

Validity of  
acts of  
directors.

Acts of  
fraud, &c.  
by direc-  
tors, &c., a  
misde-  
meanor.

XXIX. And be it enacted, that if any director of a Joint Stock Company registered under this act be either directly or indirectly concerned or interested in any contract proposed to be made by or on behalf of the company, whether for land, materials, work to be done, or for any purpose whatsoever, during the time he shall be a director, he shall, on the subject of any such contract in which he may be so concerned or interested, be precluded from voting or otherwise acting as a director; and that if any contract or dealing (except a policy of assurance, grant of annuity, or contract for the purchase of an article or service, which is respectively the subject of the proper business of the company, such contract being made upon the same or the like terms as any like contract with other customers or purchasers), shall be entered into, in which any director shall be interested, then the terms of such contract or dealing shall be submitted to the next general or special meeting of the shareholders to be summoned for that purpose; and that no such contract shall have force until approved and confirmed by the majority of votes of the shareholders present at such meeting; and that if at any time any director cease to be a holder of the prescribed number of shares in the company, or shall become a bankrupt or insolvent, or shall have suspended payment, or compromised with his creditors, or be declared a lunatic, then it shall be unlawful for any such director to continue as a director, or to act as such, and the office of such director shall be and is hereby declared to be vacant.

XXX. And be it enacted, that notwithstanding it may be afterwards discovered that there was some defect or error in the appointment of any person acting or who may have acted as a director of a Joint Stock Company registered under this act, or that such person was disqualified, yet all acts done by him as such director before the discovery of such defect or error, either solely or with other directors, shall be as binding on him, and on the company, and the directors and officers thereof, as if such person had been duly appointed or qualified, and if such acts were done bonâ fide, shall be as binding on all persons whomsoever as if such person had been duly appointed or qualified.

XXXI. And be it enacted, that if any such director or other officer of any Joint Stock Company registered under this act wrongfully do or omit any act, with intent to defraud the company or any shareholder therein, or falsify or fraudulently



or fraudulently make any erasure in the books of accounts, or any document belonging to the company, then such director or officer shall be deemed to be a misdemeanor.

I. And be it enacted, that if the entry of the proceedings of any meeting of the shareholders or of the directors of any company registered under this act purport to be signed by the chairman duly presiding at such meeting, and with the seal of the company, then it shall be the duty of the judges of justice, justices, and others, and they are hereby empowered to receive the book in which such entry shall be made as prima facie evidence, not only of the proceedings of the meeting in which such entry shall be so made, but of such meetings having been convened, and of the persons making or entering such proceedings being shareholders or directors, and of the acts of the chairman.

Authentication and legal effect of books of record.

II. And be it enacted, that the books of any such company wherein the proceedings of the company are recorded shall be kept at the principal or only place of business of the company, and at all reasonable times such books shall be open to the inspection of any shareholder of the company; subject nevertheless to the provisions of the deed of settlement, or of any other instrument relating to the company.

Inspection of books of registry.

V. And be it enacted, that the directors shall cause the accounts of such company to be duly entered in books to be kept for the purpose.

Account books.

7. And be it enacted, that fourteen days at the least shall be the period at which the accounts are required to be delivered to the auditors as hereinafter provided the directors of the company shall cause the books of the company to be balanced and a full and fair balance sheet to be made up; and that a copy of such balance sheet being delivered to the auditors as hereinafter provided, the directors or any three of their number shall examine such balance sheet, and sign it as so examined, and that when the balance sheet shall have been so examined the chairman of the directors shall cause the same to be entered in the books of the company.

Balancing of books.

7I. And be it enacted, that at each ordinary meeting of the shareholders the directors shall produce such balance sheet to the shareholders assembled thereat.

Balance sheet.

7II. And be it enacted, that during the space of four weeks previously to such ordinary meeting, and also during the same space of time thereafter, every shareholder of the company may, at any time, inspect and take extracts from the books of account of the company.

Inspection of accounts.

subject to the provisions of the deed of settlement, or of law, inspect the books of account and the balance sheet of the company, and take copies thereof and extracts therefrom; and that if at any other time three directors authorize in writing any shareholder to make such inspection, then at such time the shareholder so authorized may make such inspection.

**Auditors.****Appoint-  
ment of au-  
ditors.**

**XXXVIII.** And be it enacted, that every Joint Stock Company completely registered under this act shall at its next general meeting appoint one or more auditors of the accounts of the company (one of whom at least shall be appointed by the shareholders present at the meeting in person or by proxy); and that the directors shall return the names of such auditors to the registrar of Joint Stock Companies; and that if an auditor appointed on behalf of the shareholders, or if he shall die, or become incapable of acting, or shall decline to act at the prescribed time, and if such return be not made, then on application of any shareholder of the company it shall be the duty of the company in privy council for trade, and they are hereby authorized to appoint an auditor on behalf of the shareholders; and the auditor so appointed shall continue to act till the next general meeting; and the due appointment of such auditor shall be returned to the registrar of Joint Stock Companies, and that thereupon it shall be his duty to register the same; and that it shall be the duty of the commissioners of the treasury and they are hereby authorized to order that the company shall pay to such auditor such salary or remuneration as to the said commissioners shall seem fit and suitable, having regard to the duties of his office, and that upon such auditor shall be entitled to recover such salary or remuneration from the company as and when it shall become due, according to the terms of the appointment thereof.

**Salary of  
such au-  
ditor.****Delivery of  
accounts to  
auditors.**

**XXXIX.** And be it enacted, that twenty-eight days before the ensuing ordinary meeting at which such balance sheet is required to be produced to the shareholders the directors shall deliver to the auditors the half-yearly or other periodical accounts, and the balance sheet required to be presented to the shareholders; and that the auditors shall receive from the company such accounts and balance sheet, and examine the

**Powers of  
auditors.**

**XL.** And be it enacted, that throughout the year the auditors at any reasonable times of the day it shall be lawful for the auditors if they are hereby authorized to inspect the books of account and the books of registry of such company; and that the auditors may demand and have the assistance of such officers and servants of the company, and such documents as they shall require for the full performance of their duty in auditing the accounts.

**Report by  
auditors.**

**XLI.** And be it enacted, that within fourteen days

such balance sheet and accounts the auditors shall affirm such accounts, and report generally thereon, or if they do not see proper to confirm such accounts, report thereon, and deliver such accounts and balance sheet to the directors of the company.

And be it enacted, that ten days before the ordinary meeting of such company, the directors shall, subject to the provisions of any deed of settlement or bye law in that behalf, send to every shareholder, according to his registered address, a printed copy of the balance sheet and audit report, and shall, at such meeting of the company, cause such to be read, together with the report of the directors. Publication of reports.

And be it enacted, that within fourteen days after the meeting at which it shall be the duty of such directors and they are required to return to the said registry office a copy of the balance sheet, and of the report of the auditors thereon; and upon it shall be the duty of the registrar of Joint Stock Companies, and he is hereby required to register or file the same with the other documents relating to such company. Balance sheet and auditors' report to be registered.

And for the purpose of regulating contracts entered into on behalf of any Joint Stock Company completely registered under this act (except contracts for the purchase of any article for a sum or consideration for which doth not exceed the sum of ten pounds, or for any service the period of which doth not exceed six months, and the consideration for which doth not exceed ten pounds, and except bills of exchange and promissory notes), it is enacted, that every such contract shall be in writing, and shall be signed by two at least of the directors of the company on behalf of the same shall be entered into, and shall be sealed with the common seal thereof, or signed by some officer of the company in its behalf, to be thereunto expressly authorized by the order or resolution of the board of directors applying to the particular case; and that in the absence of such requisites or in the absence of them any such contract shall be void and ineffectual against the company on whose behalf the same shall be made): and that every such contract for the purchase of any article the consideration of which doth not exceed the sum of ten pounds, or for any services the period of which doth not exceed six months, and the consideration for which doth not exceed ten pounds, entered into on behalf of any Joint Stock Company completely registered under this act, may be entered into by an officer authorized by a general bye-law in that behalf made: and that every such contract, whether under seal or not, shall be immediately after the same shall have been entered into be registered by the secretary or other appointed officer of the company on whose behalf the same shall have been entered into, Contracts. Requisites of contracts. Report to secretary.

## Liability.

who shall enter the same in proper books to be kept for that purpose : and that if any such contract be not so reported entered, then the officer by whose default such contract shall not be so reported or entered shall be liable to repay to the company on whose behalf such contract may be made the amount of the consideration agreed to be paid by or on behalf of the company in respect of such contract.

## Requisites of bills and notes by company.

**XLV.** And be it enacted, with regard to bills of exchange or promissory notes made, accepted, or endorsed on the account of any such company, so far as relates to the making, accepting or endorsing the same, and to the liability of any such company thereon, that if the directors of the company be authorized by deed of settlement or bye-law to issue bills of exchange or promissory notes, then every such bill of exchange or promissory note shall be made or accepted (as the case may be) by and in the names of two of the directors of the company on whose behalf or account the same may be made or accepted, and shall be by such directors expressed to be made or accepted by them on behalf of such company : and every such bill of exchange and promissory note so made or accepted as aforesaid, shall be countersigned by the secretary or other appointed officer of the company in whose behalf the same is expressed to be made or accepted : and that every such bill of exchange so made as aforesaid, or received by or on behalf of the company, may be endorsed in the name of the company by an officer authorized by deed of settlement or bye-law in that behalf ; and that every such bill of exchange or promissory note so made, accepted or endorsed as aforesaid shall, in due manner, after the making, accepting or endorsing of the same, be reported to the proper officer of the company on whose behalf the same shall have been made, accepted or endorsed, and such officer so mentioned shall enter the same in proper books to be kept for that purpose ; and that if any such bill of exchange or promissory note be not so reported and entered, then the officer by whose default such bill or note shall not be so reported or entered shall be liable to repay to the company the amount of the consideration which the company shall pay or be liable to pay in respect of such bill or note : provided always, that nothing herein contained shall be deemed to make any such secretary or other appointed officer personally liable upon any such bill of exchange or promissory note, nor be deemed to make any such directors liable thereon, except as shareholders of the company.

## Report and entry thereof.

every such company on whose behalf or account any such bill of exchange or promissory note shall be made, accepted or endorsed, in manner and form aforesaid, shall and may be sued thereon, as fully and effectually, and in the same manner as in the case of any contract, made and entered into under their common seal.

## Liability.

XLVI. And be it enacted, that all deeds and instruments Deeds, &c.  
 bearing the seal of the Company shall be signed by two at the to be signed.  
 & of the company.

XLVII. And be it enacted, that all bye-laws made by any Bye-laws.  
 Joint Stock Company completely registered under this act in  
 pursuance of the power hereinbefore given, must be reduced  
 to writing, and must have affixed thereto the common seal of  
 the company; and that such bye-laws must be registered at the  
 office for registering Joint Stock Companies, and until they be  
 registered they shall not be of any force; and that such bye-  
 laws must be printed and circulated for the use of the share-  
 holders, and a copy thereof must be given to every officer of  
 the company, and to every shareholder who shall require the  
 same.

XLVIII. And be it enacted, that in all actions, suits, and Bye-laws to  
 and legal proceedings for the enforcement of such bye-laws, or be evidence.  
 or penalties for the breach thereof, the production of a written  
 printed copy of the bye-laws of the company, having the  
 seal of office of the registrar of Joint Stock Companies affixed  
 thereto, shall be sufficient evidence of such bye-laws.

LIX. And be it enacted, that it shall be the duty of the Capital.  
 directors of every Joint Stock Company registered under this Register of  
 to keep or cause to be kept a book, to be called the "Re- share-  
 gister of Shareholders," and from time to time in such book to holders.  
 set forth the following particulars; that is to say,  
 the names and addresses of all persons or corporations being  
 shareholders of the company; and also,  
 the number of shares to which such shareholders shall be  
 respectively entitled, distinguishing each share by its  
 number; and also,  
 the amount of the instalments paid on such shares.

. And be it enacted, that it shall be lawful for every share- Inspection  
 holder, or if such shareholder be a corporation, then the clerk or of register  
 principal officer of such corporation, at all convenient times to of share-  
 show the register of shareholders gratis, and to require a copy holders.  
 thereof or of any part thereof; and that the company may de-  
 mand a sum not exceeding sixpence for every one hundred words  
 required to be copied.

L. And be it enacted, that, on demand of the holder of any Requisites  
 share in any Joint Stock Company completely registered under of certifi-  
 this act, the company shall cause a certificate of the proprietor. cates of  
 of such share to be delivered to such shareholder, specifying shares.  
 the share in the undertaking to which such shareholder is en-  
 titled, and the amount paid up in respect of such share at the

date of such certificate, and shall have the common seal of the company affixed thereto ; and for such certificate the company may demand any sum not exceeding one shilling ; and that such certificate must be according to the form in the schedule (I.) to this act annexed, or to the like effect.

Effect of  
certificate  
as evi-  
dence.

LII. And be it enacted, that it shall be the duty of all courts of justice, judges, justices, and others to admit such certificate as *prima facie* evidence of the title of the shareholder to the share therein specified ; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Renewal of  
certificate.

LIII. And be it enacted, that if any such certificate be worn out or damaged, then, upon such certificate being produced at some meeting of the directors, it shall be lawful for them to order such certificate to be cancelled ; and that thereupon another similar certificate shall, if he require the same, be given to the party in whom the property of such certificate and of the share therein mentioned shall at the time be vested ; or if such certificate be lost or destroyed, then, upon proof thereof, a similar certificate shall, if he require the same, be given to the party entitled to the certificate so lost or destroyed ; and that in either case it shall be the duty of the secretary, and he is hereby required to make a due entry of the substituted certificate in the register of shareholders, and for every such certificate so given or exchanged the company may demand any sum not exceeding the sum of one shilling.

Transfer of  
shares.

LIV. And be it enacted, that, subject to the regulations herein contained, and to be contained in any deed of settlement of any Joint Stock Company completely registered under this act, it shall be lawful for every shareholder of such company and he is hereby entitled to sell and transfer his shares therein by deed duly stamped, in which the full amount of the pecuniary consideration for such sale shall be truly expressed, and which instrument of transfer must be according to the form in the schedule (K.) to this act annexed or to the like effect ; and that the directors of the company shall cause a memorial of such instrument of transfer, when produced at the office of the company, to be entered in a book to be called " The Register of Transfers," and the entry thereof to be endorsed on the instrument of transfer ; and for every such entry and endorsement the company may demand any sum not exceeding one shilling ; and that until such instrument of transfer shall have been so produced at the office of the company the purchaser of the share shall not be entitled to receive any of the profits of the company, or to vote in respect of such share : provided always, that if at the time of such transfer the shareholder shall not have paid the full amount due and payable to the company on every share held by him,

then he shall not be entitled to transfer any share, unless there be a provision to the contrary in the deed of settlement.

LV. And be it enacted, that if any shareholder fail to pay any instalment of capital due upon or in respect of any share held by him, when the same shall become due, it shall be lawful for any such company and they are hereby authorized to sue such shareholder for the amount in an action of debt, in any court having competent jurisdiction in respect of the same ; and that in the declaration in any such action it shall be sufficient to state only that at the time of the commencement of the suit the defendant, as the holder of certain shares (stating how many) in a certain company or undertaking, as the case may be, (naming it,) was indebted to the company in a certain sum (stating the amount of the instalments, or so much thereof as is sought to be recovered,) for certain instalments of capital then due and payable in respect of the said shares, and that the defendant hath not paid the same ; and that if upon the trial of any such action it shall be proved that the defendant was the holder of any share when such instalments, or any of them, in respect of the same, and for which the action is brought, became due, then such company shall recover such instalments, or so much thereof as is due, together with interest for the same at the rate of five pounds per centum per annum, to be computed from the day on which such instalment shall have become due.

Proceedings to recover instalments of capital.

Form of declaration for instalments.

LVI. And be it enacted, that if any share be held jointly by several persons, then any notice required to be given shall be given to such of the said persons whose names shall stand first on the register of shareholders, and notice so given shall be sufficient notice to all the proprietors of such share, and the person so standing first shall be entitled to vote, and to have all the privileges hereby conferred on shareholders.

Notification to joint proprietors.

LVII. And be it enacted, that at every principal place of business of any Joint Stock Company completely registered under this act, it shall be the duty of the directors and officers of the company and they are hereby respectively required to have written or printed copies of an index or abstract of the deed of settlement, approved by the registrar of Joint Stock Companies, and a list of the shareholders of the company, and the number of shares held by each, and also a list of the directors and officers thereof, and a copy of the bye-laws sealed with the seal of the company, as returned to the said registry office ; and that if at any reasonable time any shareholder, or any person authorized in writing by him, apply at any such place of business of the company, to inspect the same, then on demand thereof made during the usual hours of business, it shall be the duty of the directors or officers, and they respectively are hereby required to permit

Abstract of deed of settlement

List of shareholders.

Copy of bye-laws.

such inspection ; and that if on such demand any such director or officer to whom such demand is made do not thereupon permit such inspection then, on conviction thereof, he shall be liable to pay for every such offence a sum not exceeding forty shillings.

Existing  
companies.  
Registra-  
tion of  
existing  
companies.

LVIII. And be it enacted, with regard to all Joint Stock Companies to which this act is hereinbefore made to apply, and which shall exist on the first day of November one thousand eight hundred and forty-four, whether incorporated by act of Parliament or by charter, or privileged by letters patent, or established by virtue of a deed of settlement, or of any other instrument, or by virtue of any authority whatever, or in any other way whatever, that within three months from the said first day of November the directors, managers, officers, or others having the direction, management, conduct, superintendence, or execution of the affairs of any such company, shall register such company at the office for the registration of Joint Stock companies, and for that purpose shall make or cause to be made a return of the following particulars, according to the schedule (I.) hereunto annexed ; that is to say.

Returns of  
matters for  
registration.

1. The name or style of the company ; and also,
2. The purpose of the company ; and also,

Certificate  
of registra-  
tion gratis.

3. The principal or only place for carrying on its business :  
And that on such registration every such company shall be entitled to have a certificate of registration, without paying any fee either for such registration or for such certificate, but such certificate shall be for the purpose of showing that such company had registered, and shall not be considered as a certificate of complete registration, so as to confer on any such company the powers and privileges of this act ; and that if within the said period the persons hereby required to register any such company fail so to do, then, on conviction thereof, every such company so failing shall forfeit for every such offence a sum not exceeding fifty pounds.

Penalty.

Privileges  
of existing  
companies.

LIX. And be it enacted, with regard to such existing companies as aforesaid (except Assurance Companies), that if any such existing company be so constituted as is by this act required with regard to any future company, or if the deed or deeds of settlement of such existing company contain the particulars by this act required to be contained in some one or other deed of settlement of such future company, and if any other conditions required to be fulfilled by or in respect of any such future company, in order to obtain a certificate of complete registration, be fulfilled in respect of any such existing company, then such existing company shall be entitled to obtain a certificate of complete registration ; but if such existing company be not so constituted, or if such deed of settlement do



not contain such particulars, or if such other conditions be not fulfilled, then, on such existing company returning a deed or deeds according to the provisions of this act, and also, in addition to any other matters by this enactment required to be returned by such existing company, such other matters as are by this act required to be returned by any future company in order to obtain or before obtaining a certificate of complete registration as aforesaid, or such modification of the said deeds or returns, or of any of them, as the committee of privy council for trade shall direct by any regulation to be made in that behalf, either on the part or in respect of any one company or of any class of companies, and signed by one of the secretaries of the said committee, such existing company shall be entitled to a certificate of complete registration; and on such certificate of complete registration being granted by the registrar of Joint Stock Companies it shall be lawful for such existing company, its shareholders, its directors, and its officers, and they are respectively hereby empowered to have and exercise all such powers and privileges as are by this act conferred upon Joint Stock Companies to be hereafter formed, subject nevertheless with respect to all such powers and privileges to the provisions of this act, or of any other act to be hereafter passed for regulating the same; and that every such company not incorporated shall be incorporated for the purposes of this act, as from the date of the certificate of complete registration, in such manner as herein-before provided with regard to companies to be formed after the first day of November next; and that any directors or other managers of any such company as last aforesaid, with the consent of at least three-fourths in number and value of the shareholders of such company present at a general meeting summoned for that purpose, may at any time or times hereafter make any alterations in the constitution of the said company or otherwise as shall be necessary for enabling such company to come within the provisions of this act, so as the same shall be approved of by the said committee of privy council for trade; and the order of such committee, signed as aforesaid, shall be sufficient evidence of such provisions having been complied with, and that any such company has come within the provisions of this act: Provided always, with regard to existing companies, that in the event of any such company becoming entitled to a certificate of complete registration as aforesaid, it shall not be necessary to pay in respect of such certificate any higher fee than the sum of five pounds, and also the sum of sixpence additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority.

Effect of  
certificate  
of com-  
plete re-  
gistration.

Incorpora-  
tion.

Alteration  
of deeds of  
settlement.

Fees.

LX. And be it enacted, that so much of the provisions of this act as are applicable to companies formed after the first

Registra-  
tion of new  
companies.

day of November next shall apply to companies begun or formed since the passing of this act, so far as such provisions shall on or after the said first day of November be applicable to such last-mentioned companies.

Effect of  
incorpora-  
tion of  
existing  
companies.

LXI. Provided always, and be it enacted, that, notwithstanding the incorporation of any existing company in pursuance of this act, every such company, and the members and officers of every such company, shall be liable to be sued in respect of any valid obligation incurred before such incorporation, in the same manner and with the same legal consequences as if such company had not been incorporated.

Modifica-  
tion of con-  
ditions and  
regulations  
as to com-  
panies.

LXII. And be it enacted, that if at any time during the period of five years from the said first day of November a memorial be presented to the committee of privy council for trade, by or on the part of any company, whether now existing or hereafter formed, except Assurance Companies, making application that any of the conditions and regulations prescribed by this act be dispensed with or modified, and setting forth the special grounds of such application, and if such application be registered at the office of the registrar of Joint Stock Companies, and if, before such application be granted, the same be three times advertised, at intervals not less than one week, in the *London Gazette*, then from time to time during the said period of five years, and six months after the expiration thereof, it shall be lawful for the said committee and they are hereby empowered, both as regards companies formed before this act shall come into operation and afterwards, either to dispense with or modify such of the conditions by this act required to be fulfilled by any future company for the purpose of obtaining a certificate of complete registration, and such of the regulations by this act made for the government or management of such companies, as to the said committee shall seem fit for facilitating the application of this act to the constitution and arrangements of any such company, but so that nevertheless the order or instrument by which such dispensation or such modification shall be made be in writing; and be registered at the office for registering Joint Stock Companies; and this act shall be construed as if such modifications or alterations were herein contained; and further, that annually it shall be the duty of the said committee to cause to be laid before both Houses of Parliament a return of all such applications for such dispensation or modification, and of the orders made on such application.

Board of  
Trade to  
receive and  
decide ap-  
plications.

Mining  
partner-  
ships.

LXIII. Provided always, and be it enacted, that nothing in this act contained shall extend to or be construed to extend to any partnership formed for the working of mines, minerals,

ries, of what nature soever on the principle commonly  
the cost book principle.

7. Provided always, and be it enacted, that nothing in Irish ano-  
contained shall extend or be construed to extend to nymous  
ships in Ireland commonly called "anonymous part- partner-  
," formed under and by virtue of an act passed in ships.  
liament of Ireland in the twenty-first and twenty-second  
the reign of his late Majesty King George the Third,  
l "An Act to promote Trade and Manufactures by  
ng and encouraging partnerships."

. And forasmuch as great injury has been inflicted Fraudulent  
e public by companies falsely pretending to be patron- companies.  
directed or managed by eminent or opulent persons ;  
the purpose of preventing such false pretences, be it  
, with regard to every company or pretended company  
ever, whether registered or not, and whether now exist-  
not, that if any person shall make any such false pre-  
knowing the same to be false, in any advertisement or  
per, whether printed or written, and whether published  
newspaper, or handbill, or placard, or circular, then every  
rson shall forfeit for every such offence a sum not ex-  
ten pounds.

7. Provided always, and be it enacted, that every judg- Judgments  
and every decree or order which shall be at any time after against a  
ssing of this act obtained against any company com- company.  
registered under this act, except companies incorporated  
of Parliament or charter, or companies the liability of  
mbers of which is restricted by virtue of any letters  
in any action, suit, or other proceeding prosecuted by  
st such company in any court of law or equity, shall  
y take effect and be enforced, and execution thereon be  
not only against the property and effects of such com-  
ut also if due diligence shall have been used to obtain  
tion of such judgment, decree, or order, by execution  
the property and effects of such company, then against  
son, property, and effects of any shareholder for the time  
or any former shareholder of such company in his natural  
vidual capacity, until such judgment, decree or order  
: fully satisfied : provided, in the case of execution against Former  
mer shareholder, that such former shareholder was a share-  
lder of such company at the time when the contract or holders.  
nent for which such judgment, decree, or order may  
en obtained was entered into, or became a shareholder  
the time such contract or engagement was unexecuted or  
fied, or was a shareholder at the time of the judgment,  
or order being obtained : provided also, that in no case

shall execution be issued on such judgment, decree, or order against the person, property or effects of any such former shareholder of such company after the expiration of three years next after the person sought to be charged shall have ceased to be a shareholder of such company.

Reimburse-  
ment of  
share-  
holders.

LXVII. Provided always, and be it enacted, that every person against whom, or against whose property or effects, execution upon any judgment, decree, or order obtained as aforesaid, shall have been issued as aforesaid shall be entitled to recover against such company all loss, damages, costs, and charges which such person may have incurred by reason of such execution; and that after due diligence used to obtain satisfaction thereof against the property and effects of such company, such person shall be entitled to contribution for so much of such loss, damages, cost, and charges as shall remain unsatisfied, from the several other persons against whom execution upon such judgment, decree, or order, obtained against such company, might also have been issued under the provision in that behalf aforesaid; and that such contribution may be recovered from such persons as aforesaid in like manner as contribution in ordinary cases of co-partnership.

Contribu-  
tions.

Execution  
against  
share-  
holder.

LXVIII. And be it enacted, that in the cases provided by this act for execution on any judgment, decree, or order in any action or suit against the company, to be issued against the person or against the property and effects of any shareholder or former shareholder of such company, or against the property and effects of the company, at the suit of any shareholder or former shareholder, in satisfaction of any monies, damages, costs, and expenses paid or incurred by him as aforesaid in any action or suit against the company, such execution may be issued by leave of the court, or of a judge of the court, in which such judgment, decree, or order shall have been obtained, upon motion or summons for a rule to show cause, or other motion or summons consistent with the practice of the court, without any suggestion or scire facias in that behalf; and that it shall be lawful for such court or judge to make absolute or discharge such rule, or allow or dismiss such motion (as the case may be), and to direct the costs of the application to be paid by either party, or to make such other order therein as to such court or judge shall seem fit; and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively for giving effect to the provision in that behalf aforesaid as the judges of such courts respectively shall from time to time think fit to order; and the execution of such writs shall be enforced in like manner as writs of execution are now enforced: provided that any order made by a judge as aforesaid may be discharged or varied by the court, on application made thereto

by either party dissatisfied with such order: provided also, that no such motion shall be made, nor summons granted, for the purpose of charging any shareholder or former shareholder, until ten days' notice thereof shall have been given to the person sought to be charged thereby.

**LXIX.** And be it enacted, that all penalties and forfeitures Recovery inflicted or authorized to be imposed by this act, and all costs penalties. and expenses for which any person may be liable under this act, or by virtue of any bye-law, and the recovery of which has not been otherwise specially herein-before provided, shall and may be recovered, by any person who shall proceed for the same, before any two of her Majesty's justices of the peace of the county, city, or place where the offender or person liable to pay such costs or expenses shall reside, or where the offence shall be committed.

**LXX.** Provided always, and be it enacted, that all penalties Appropria. and forfeitures recovered under this act, and not otherwise spe- tion of pe- cially appropriated, shall be applied as follows; one-half thereof nalties. shall be paid to the person who shall sue or proceed for the same, and the other half to her Majesty's use, and shall be paid to the sheriff of the county, city, or town where the same shall have been imposed; and that all convictions before justices shall be returned to the court of Quarter Sessions under the provisions of an act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated," and shall be paid to the sheriff of the county, city, or town, and shall be duly accounted for by him.

**LXXI.** And be it enacted, that in all cases in which any Hearing o penalty or forfeiture, or any costs or expenses are recoverable summons. before two justices of the peace under this act, it shall and may be lawful for any one justice of the peace to whom complaint shall be made of any such offence to summon the party complained of, and the witnesses on each side, before any two such justices; and at the time and place mentioned in such summons, or at any adjournment of such summons, the said two justices may hear and determine the matter of such complaint, and upon due proof thereof, either by confession of the party or by the oath of one or more credible witness or witnesses, give judgment or sentence on such complaint, with costs to be allowed by such justices, although no information in writing shall have been exhibited or taken; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited; and all penalties, forfeitures, and costs so adjudged

may be levied by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of any one justice; and in default of such distress the offender may be committed to prison by any one justice, by warrant under his hand and seal, there to remain for any time not exceeding three months, unless such penalties, forfeitures, and costs shall be sooner paid.

Compul-  
sory at-  
tendance  
of wit-  
nesses.

LXXII. And be it enacted, that if any person shall be summoned as a witness to give evidence before such justices of the peace touching any matter which such justices are hereby authorized to inquire into, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justices, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence a sum not exceeding five pounds, to be levied and paid in such manner and by such means as are herein-before directed as to other penalties recoverable before justices under this act.

Limitation  
as to penal-  
ties.

LXXIII. And be it enacted, that every proceeding for any offence punishable on summary conviction by virtue of this act shall be commenced within six months after the commission of the offence, and not after.

Appeal to  
Quarter Ses-  
sions.

LXXIV. And be it enacted, that if any person shall think himself aggrieved by the judgment of such justices, he may, within one month next after such conviction, and upon giving ten days' notice of appeal in writing to the party in whose favour such judgment shall have been given, stating the nature and grounds of appeal, and upon entering into recognizances with two sufficient sureties to the amount of the value of such penalty and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed, appeal to the next general Quarter Sessions of the peace for the county, city, or place where such conviction shall have been made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of such appeal, and to award such costs as the court shall think reasonable to the party in whose favour such appeal shall be determined.

Certiorari.

LXXV. And be it enacted, that no conviction or other proceeding before justices under this act shall be set aside for want of form, nor be removed by certiorari or otherwise into any of her Majesty's superior courts of record.

Recovery of  
penalties.

LXXVI. And be it enacted, that in any case to which a

penalty is annexed by this act the whole or any part of such penalty may be recovered by action of debt in any court now or hereafter having competent jurisdiction, by any person who shall sue for the same; and that in every such action for the recovery of such penalty, so much of such penalty as is sought to be recovered shall be endorsed on the writ of summons, and the plaintiff shall not be entitled to recover a greater sum than the sum so endorsed; and if the party suing for any such penalty recover the same or any part as aforesaid, he shall be entitled to full costs of suit.

**LXXVII.** And be it enacted, that it shall not be lawful for any person to commence or prosecute any action, bill, plaint, information, or prosecution, in any of her Majesty's superior courts, for the recovery of any penalty or forfeiture incurred by reason of any offence committed against this act, unless the same be commenced or prosecuted in the name and with the consent of her Majesty's attorney-general; and that if any action, bill, plaint, information, or prosecution, or any proceeding before any justices as aforesaid, shall be commenced or prosecuted in the name of any other person than is in that behalf before-mentioned, the same shall be and are hereby declared to be null and void. Actions, &c.  
for penalties.  
Attorney-general's consent.

**LXXVIII.** And be it enacted, that with regard to every act, instrument, or writing by this act required or authorized to be done or to be made or executed by the Committee of Privy Council for trade, that if the same purport to be so done, made, or executed by or on behalf of the said committee, and be signed by one of the secretaries of the said committee, and (if it require a seal) be sealed by the seal of the said committee, then it shall be deemed to be sufficiently done, made, or executed, to all intents and purposes. Authentication of acts  
by committee of  
Privy Council.

**LXXIX.** And be it enacted, that it shall be the duty of the registrar of Joint Stock Companies to make a report annually to the said Committee of Privy Council for Trade, setting forth,— Annual report to Parliament.

1. A list of companies provisionally registered during the past year :
2. A list of companies completely registered during the past year :
3. A list of cases in which application shall have been made for the enforcement of penalties for failure to register, and the proceedings, whether by prosecution or otherwise, taken in consequence of such applications, and the results of such proceedings :
4. A list of companies which shall have been provisionally registered, but which have not obtained complete registration :

5. A return of the regulations made by the said committee with regard to the returns required to be made by companies :
6. A return of persons appointed to the office of registrar of Joint Stock Companies, and other officers and clerks, and of their salaries or other remuneration, and of the rules made for the regulation of the said office :
7. A return of the amount of all fees paid for certificates of provisional or complete registration, and for every other purpose :
8. A return of the scale of fees appointed by the Commissioners of her Majesty's treasury for the services to be performed by the registrar, and of the respective amounts of such fees :
9. A return of the cases in which the companies had failed to appoint auditors, and of the proceedings taken thereon :
10. A return of prosecutions under this act for any offences not herein-before specified :
11. A return of the number of bankruptcies of Joint Stock Companies, and of the amount of the debts and assets of such companies respectively :
12. A return of modifications made by the Committee of Privy Council for Trade, in pursuance of this act, in the conditions and regulations to be observed by companies, whether existing or future ;

And that, within six weeks after the meeting of Parliament next after the first day of January in every year, such report shall be laid before both Houses of Parliament.

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FORMS OF PROVISIONAL REGISTRATION.

*The following Forms, which have been substituted for those in schedules C, D, and E, have been furnished by the Registrar of Joint Stock Companies.*

Sheet A. Nos. 1, 2, 3.

PROVISIONAL REGISTRATION.

Return of the Name, Business, and Promoters of the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18  
 Serial Number of the Return . . . . .  
 Fee on Registry . . . . .

*N.B. These items are not to be filled up by the Company.*

Upon this Return being made, a Certificate of Provisional Registration may be obtained.

Each Sheet required for this Return should be signed by one or more of the Promoters.

The Date within should be that of the period up to which the Return is made out.

1, 2, 3, The Name, Business, and Promoters of the	Company.
Provisional {	{ Date
Registration }	18

1. Name of the Proposed Company.

2. Business or Purpose.

3. Promoters of the

Company.

Name.	Occupation, Rank, or usual Title.	Place of Business (if any).	Place of Residence, (As the Street, Square, or Place, and No. of the House).
-------	--------------------------------------	--------------------------------	---

Signature.

**Sheet B. No. 4.**

## PROVISIONAL REGISTRATION.

## Return of the Place of Business of the

## Company

**PURSUANT TO SECTION 4.**

**Date of Receipt at the Registry Office,**

18

**Serial Number of the Return**

## Fee on Registry .

***N.B.—These items are not to be filled up by the Company.***

**This return must be signed by one or more of the Promoters or registered Solicitor.**

The date on the other side should be that of making the Return.

#### 4. The Place of Business of the Provisional Registration }

**Company.**  
**{ Date**

County, City, or Town.	Name of the Street, Square, or Place in which the Provisional Place of Bu- siness or Place of Meeting is situate.	Number (if any other designatio the House or Of

**Dated**

18

**Signatur**

## PROVISIONAL REGISTRATION.

**PURSUANT TO SECTION 4.**

Fee on Registry	. . . . .	. . . . .	. . . . .	. . . . .
-----------------	-----------	-----------	-----------	-----------

The Date within should be that of the day up to which the Return is out.

5.—The Provisional of the Company.  
 rovisional } Dated 18  
 gistration. }

ne.	Occupation, Rank, or usual Title.	Place of Business (if any).	Place of Residence, ( <i>As Street, Square, or Place, and the No. of the House.</i> )

***Signature.***

Sheet D.

*Consent to Act, and Agreement to take Shares by the Promoters of the Company.*

Provisional Registration.      }      {      Date

We, the undersigned, Promoters of the\*  
do, and each of us doth hereby declare his consent to be P  
† of the said Company, and each of us doth hereby  
for himself agree with‡ as Trustees for the said Com  
take one or more Share or Shares in the said proposed undertaki  
such Share or Shares being allotted to him, according to the Pro  
the said Company.

Provisional.†	Provisional.†

\* Here insert, before the name of the Company, the words “ P  
or “ Provisionally Registered,” as the case may be.  
† Here insert the appellation assumed by the persons acting i  
mation of the company, “ Provisional Directors,” or otherwise.  
‡ Here insert the names of the Trustees of the Company.





Sheet G. No. 8.

PROVISIONAL REGISTRATION.

Titles of Documents returned by the Company.  
PURSUANT TO SECTION 4.

of Receipt at the Registry Office, 18  
Number of the Return . . . . .  
n Registry . . . . .

*B.—These items are not to be filled up by the Company.*  
of every Prospectus, Circular, Hand-bill, Advertisement or other  
ment, relative to the formation or modification of the proposed  
and of every addition to or change in the same, must be returned  
, their circulation (§ 4).  
ny Document so returned be a modification of one previously  
a reference must be given on this paper to the title and date of  
such previous Document ; and the additions and omissions  
gnified by marks, in ink, upon the Document presented for regis-  
turn must be signed by one or more of the Promoters of the  
or their registered Solicitor (§ § 6, 16).  
e on the other should be that of making up the Return.

of the Titles of the Documents returned by the  
ional }  
tion. } { Dated 18

ate of previous Document.	Title of Document now returned.

Signature.

## PROVISIONAL REGISTRATION.

**PURSUANT TO SECTION 6.**

***N.B.—These items are not to be filled up by the Company.***

**That of the Acceptance must be signed by the Solicitor.**

Subsequently to such Registration, and until the Revocation or Resignation of the appointment, they must be signed by the registered Solicitor.

**For these purposes the annexed forms are provided.**

**We, Promoters of the \_\_\_\_\_ Company, do hereby appoint**  
**Gentlemen,\* \_\_\_\_\_ of her Majesty's Court of \_\_\_\_\_ to be**  
**Solicitor for the Promoters of the said Company, for the Purposes specified**  
**in the Sixth Section of the Act for the Registration, Incorporation, and**  
**Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).**

Dated this                      day of                      18

Dated this                      day of                      18

**Signature.**

**\* Insert "Attorney," or "Solicitor," as the case may be.**



PROVISIONAL REGISTRATION.

xlv

Sheet I. No. 10.

PROVISIONAL REGISTRATION.

Duplicate of the Revocation of the Appointment of a Solicitor for the Promoters of the Company.

PURSUANT TO SECTION 6.

Date of Receipt at the Registry Office, 18  
Serial Number of the Return . . . . .  
Fee on Registry . . . . .

*N.B.—These items are not to be filled up by the Company.*

This Duplicate should be signed by one or more of the Promoters of the Company.

Provisional Registration. } 10.—Duplicate of the Revocation of the Appointment of a Solicitor for the Promoters of the Company.

We, the undersigned, Promoters of the Company, do hereby make the Appointment of to be Solicitor for the Promoters of said Company, for the purposes specified in the Sixth Section of the Act the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).

Witness my hand and seal on behalf of the Promoters of the said Company by } Promoters of the said Company.  
dated this day of 18

PROVISIONAL REGISTRATION.

Sheet K. No. 11.

Duplicate of Resignation of Office by the Solicitor for the Promoters of the Company.

PURSUANT TO SECTION 6.

Date of Receipt at the Registry Office, 18  
Serial Number of the Return . . . . .  
Fee on Registry. . . . .

*N.B.—These items are not to be filled up by the Company.*

This Duplicate should be signed by the Solicitor.

Provisional Registration. } 11.—Duplicate of Resignation of Office by the Solicitor for the Promoters of the Company.

I, the undersigned, do hereby resign the Office of Solicitor for the Promoters of the Company, for the purposes specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).

Witness my hand and seal on this day of 18

*Signature.*

**SCHEDULE (F.)—See § 12.**

**RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.**

**Change of Shareholders.**

Name of Company.	Business or Purpose.	Place [ <i>or principal Place, if more than one</i> ] of Business.

**Persons known to have ceased to be Shareholders (except by transfer) since the last Return, dated the                      day of                      .**

Name.	Place of Abode.	Distinctive number of Shares.

**Persons known to have become Members (except by transfer) since the last Return, dated the                      day of                      .**

Name.	Place of Abode.	Distinctive number of Shares.

**Persons whose names have become changed by marriage or otherwise.**

Former Name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive number of Shares.

[*Date.*]

[*Signature.*]

**PROVISIONAL REGISTRATION.**

**xlvii**

**SCHEDULE (G.)—See § 56.**

**RETURN** made pursuant to the **JOINT STOCK COMPANIES REGISTRATION**  
and **REGULATION ACT, 7 & 8 Vict. c. 110, 1844.**

**For Registration of existing Companies, name of the Company,**  
**Business, &c.**

<b>Name of the Company.</b>	<b>Business or Purpose.</b>	<b>Place of Business, with the Branches (if any).</b>

**SCHEDULE (H.)**

**RETURN** made pursuant to the **JOINT STOCK COMPANIES REGISTRATION**  
and **REGULATION ACT, 7 & 8 Vict. c. 110, 1844.**

**CORRECTED RETURN.**

*[Copy of former incorrect Return.]*

**Copy.**

**Amended Return, with correct Names and Descriptions** [*in such of the  
preceding Forms as are applicable to the Case under the Provisions of  
the foregoing act.*]

*[Date.]*

*[Signature.]*

*The following Form for the complete Registration of Parliamentary Companies has been furnished by the Registrar of Joint Stock Companies :—*

Sheet X.

**COMPLETE REGISTRATION OF PARLIAMENTARY COMPANIES.**

**Certificates of Receipt of Subscription Contract, Plans, and Sections, and  
Copy of Subscription Contract of the Company.**

**PURSUANT TO SECTION 9.**

Date of Receipt at the Registry Office, 18  
Serial Number of the Return . . . . .  
Fee on Registry . . . . .

*N.B.—These items are not to be filled up by the Company.*

Companies “for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock which cannot be carried into execution without obtaining the authority of Parliament,” will be entitled to a Certificate of complete Registration.

1. On depositing at the proper offices of the two Houses of Parliament and within the proper time such Deeds of Partnership or Subscription Contracts as shall be required by the standing orders of the two Houses.
2. On returning to the registrar copies of such Deeds of Partnership or Subscription Contracts.
3. And on returning the annexed certificates (appointed by the Board of Trade) of the due receipt of the required Plans, Sections, and Books of Reference, § 9.

The first of these certificates must be signed by some person authorized on behalf of the Clerk of the Parliaments, and the second by the first or other Clerk of the Private Bill Office.

The copy of the Subscription Contract or Deed of Partnership must be written distinctly on foolscap paper, headed, “Subscription Contract (or Deed of Partnership, as the case may be), of the Company.”

The Return must be signed by one or more of the Promoters of the company, or their registered Solicitor.

Complete Registration of Parliamentary Companies.	{ Certificate of the Receipt of the Subscription Contract, Plans, &c., of the Company, at the Offices of the two Houses of Parliament.	{ Dated    18
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I hereby certify, that the Promoters of the Company, have duly deposited at the office of the Clerk of the Parliaments the copies of the Subscription Contract, and the Plans, Sections, and Books of Reference required by the standing orders of the House of Lords to be so deposited in order to their obtaining the authority of Parliament for their proposed undertaking.

*Signed*

Complete Registration of Parliamentary Companies. } Copy of the Subscription Contract of the Company. } Dated 18

I hereby certify, that the Promoters of the Company, have duly deposited at the Private Bill Office of the House of Commons the Subscription Contract, and the Plans, Sections, and Books of Reference required by the standing orders of the House to be so deposited, in order to their obtaining the authority of Parliament for their proposed undertaking.

Signed \_\_\_\_\_

### SCHEDULE (I.)—See § 50.

#### CERTIFICATE OF SHARE.

The Company, first completely registered on the day of 18 . Number

This is to certify, that A. B. of is the Proprietor of the Share, number of the Company, subject to the Regulations of the said Company, and that up to this day there has been paid up, in respect of such Share, the sum of . Given under the Common Seal of the said Company, the day of in the year 18 .

[Signature of Secretary.]

(L. S.)

### SCHEDULE (K.)—See § 53.

#### TRANSFER OF SHARES.

I A. B. of in consideration of the sum of paid to me by C. D. of do hereby transfer to the said Share [or Shares], numbered in the undertaking called the Com- pany, to hold unto the said his Executors, Adminis- trators, and Assigns [or Successors and Assigns], subject to the several conditions on which I hold the same at the time of the execution hereof. And I the said do hereby agree to take the said Share [or Shares], subject to the same conditions, and to the provisions of the Deed or Deeds of Settlement of the said Company. As witness our hands and seals, the day of

[Signature.]

## 1 VICT. CAP. 83.

*An act to compel Clerks of the Peace for Counties and Persons to take the Custody of such Documents as directed to be deposited with them under the Orders of either House of Parliament.*

Clerks of the peace, &c. to receive the documents herein mentioned, and retain them for the purposes directed by the standing orders of the Houses of Parliament.

WHEREAS the Houses of Parliament are in the habit of requiring that, previous to the introduction of any bill in Parliament for making certain bridges, turnpike roads, cuts, reservoirs, aqueducts, water-works, navigations, tunnels, ways, railways, piers, ports, harbours, ferries, docks and works, to be made under the authority of Parliament maps or plans and sections, and books and writings, or or copies of or from certain maps, plans, or sections, or writings, shall be deposited in the office of the clerk of the peace for every county, riding or division in England or Ireland, in the office of the sheriff clerk of every county in Scotland, in which such work is proposed to be made, and also in the office of the parish clerk in every parish in England, the school clerk in every parish of Scotland, or in royal burghs with the town clerk and the postmaster of the post town in or nearest to every town in Ireland, in which such work is intended to be made, and other persons: and whereas it is expedient that such maps, plans, sections, books, writings, and copies or extracts from the same, should be received by the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned; be it enacted, by the Queen's most excellent Majesty, by the advice and consent of the Lords spiritual and temporal, and of the Commons, in this present Parliament assembled, with the authority of the same, that whenever either of the Houses of Parliament shall by its standing orders, already made or to be made, require that any such maps, plans, sections, books or writings, or extracts or copies of the same, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies and extracts shall be received by the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents, maps, plans, sections, books, writings, copies and extracts so directed to be deposited with them respectively, in the manner and for the purposes and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and end

on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

II. And be it further enacted, that all persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk or postmaster having the custody of any such map, plan, section, book, writing, extract or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every hundred words copied therefrom.

Clerks of the peace, &c. to permit such documents to be inspected or copied by persons interested.

III. And be it further enacted, that in case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster or other person, shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster or other person shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid and effectual to all intents and purposes as if an information in writing had been exhibited.

Clerks of the peace, &c., for every omission to comply with the provisions of this act, liable to the penalty of 5*l.*, to be recovered in a summary way.

1 & 2 VICT. CAP. 98.

*An Act to provide for the Conveyance of the Mails by Railway.*  
[14th August, 1838.]

Postmaster  
general may  
require rail-  
way compa-  
nies to con-  
vey the  
mails.

WHEREAS it is expedient that provisions should be made by law for the conveyance of the mails by railways at a reasonable rate of charge to the public: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that in all cases of railways already made or in progress or to be hereafter made within the United Kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the postmaster general, by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter bags shall from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as need may be, at such hours or times in the day or night as the postmaster general shall direct, together with the guards appointed and employed by the postmaster general in charge thereof, and any other officers of the Post Office; and thereupon the said company shall, from and after the day to be named in such notice, at their own cost, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter-bags to the satisfaction of the postmaster general, and receive, take up, carry and convey, by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter-bags as shall for that purpose be tendered to them, or any of their officers, servants, or agents, by any officer of the post office, and also to receive, take up, carry and convey, in and upon the carriages carrying such mails or post letter-bags, the guards in charge thereof, and any other officers of the post office, and shall receive, take up, deliver, and leave such mails or post letter bags, guards and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of arrival, as the postmaster general shall in that behalf from time to time order or direct: Provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of



such railway or railways for the conveyance of passengers by their first class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months' previous notice shall be given to the postmaster general of any such intended alteration.

II. And be it enacted, that it shall be lawful for the postmaster general (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter bags shall be exclusively appropriated for the purpose of carrying the mails. If required, carriage to be applied exclusively to such conveyance.

III. And be it enacted, that the company of proprietors of any such railway shall, on being required so to do by the postmaster general, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the postmaster general, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway at such hours or times, and subject to all such reasonable regulations as aforesaid, as the postmaster general shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last mentioned carriage or carriages, all such post letter-bags and officers of the post office as the postmaster general shall reasonably require, and shall deliver and leave any post letter bags and officers of the post office at such places on the line of the railway as the postmaster general shall in that behalf from time to time reasonably order and direct. Railway company, if required, to provide separate carriage for sorting letters.

IV. And be it enacted, that in case the postmaster general shall at any time be desirous of sending by any such railway any of her Majesty's mail coaches or mail carts, with the mails or post-letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, instead of sending the said mails or post-letter bags, guards, and officers of the post office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the postmaster general, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter-bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the postmaster general as hereinbefore mentioned. Postmaster general may direct mails to be carried on railway in mail coaches, in lieu of company's carriages.

V. And be it enacted, that for the greater security of the mails or post letter-bags so to be carried or conveyed by rail- Railway companies

to be subject to directions of Post Office respecting conveyance of mails.

ways the company of proprietors of such respective railways along which such mails or post letter-bags, mail coaches, or carts and carriages for sorting letters shall be so required by the postmaster general to be conveyed, and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter-bags, guards, and officers of the post office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the postmaster general, or such officer of the post office as he shall nominate in that behalf, shall in his discretion from time to time give or make: Provided always, that it shall not be lawful for any officer or servant of the post office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter-bags shall be conveyed; but if any cause of complaint shall arise, the same shall be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station upon the railway; and in case of any default for neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the postmaster general or other officer of the post office so to be nominated as aforesaid, the railway company shall be wholly responsible for the same.

Remuneration to railway companies for conveyance of mails.

VI. And be it enacted, that every company of proprietors of any railway along which such mails or post letter-bags, mail coaches, carts, or carriages shall be so required by the postmaster general to be conveyed, shall be entitled to such reasonable remuneration to be paid by the postmaster general to any such company of proprietors for the conveyance of such mails, post letter-bags, mail guards, and other officers of the post office, mail coaches, carts, and carriages in manner required by such postmaster general, or by such officer of the post office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the postmaster general and such company of proprietors, or in case of difference of opinion between them then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the postmaster general, or by such officer of the post office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said postmaster general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

Agreements between

VII. And be it enacted, that notwithstanding any agreement

entered into between the postmaster general and any such postmaster company, or any award to be made on any such reference as general and aforesaid, fixing the amount of remuneration to be paid to such railway company for any services to be rendered by them as aforesaid, it companies shall be lawful and competent to and for the postmaster general, as to amount of remuneration, &c. may be altered. by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as hereinafter provided, a fresh agreement shall be entered into between the postmaster general and such company, regulating the future amount of remuneration to be paid by the postmaster general to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the postmaster general to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the postmaster general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

VIII. And be it enacted, that it shall be lawful for the postmaster general, and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months' previous notice that such services or any part thereof shall cease and determine; and thereupon, at the expiration of such six calendar months' notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine. Postmaster-general may terminate services of railway companies on notice:

IX. And be it enacted, that it shall be lawful for the postmaster general at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and or may terminate services of railway companies without no-

tice, subject to certain conditions. determine accordingly : Provided, nevertheless, that in case the postmaster general shall, without giving six calendar months' notice as aforesaid, and at any time determine the services to be required by the postmaster general of any company of proprietors, or any part of such services, without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the postmaster general, or the breach by such company of proprietors of any of their engagements with the postmaster general, then and in any such case the postmaster general shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof in case the parties differ about the same shall be ascertained by arbitration as hereinafter mentioned.

Royal arms to be painted on engines or carriages provided for the service of the Post Office. X. And be it enacted, that on all carriages to be provided for the service of the post office on any such railway there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any prescribed by law in respect of carriages passing on any such railway ; but the want of such royal arms on any carriage belonging to or used by the post office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

Bye-laws of railway companies not to be repugnant to provisions of act. XI. And be it enacted, that it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against, or be contrary or repugnant to any of the enactments herein contained ; and that if any company of proprietors shall make or shall have made any such bye laws, orders, rules, or regulations, either prior or subsequently to the postmaster general signifying to the said company his intention that the mails or post letter-bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such bye-laws, orders, rules, and regulations, so far as they shall militate against, or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye laws, orders, rules, or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

Penalty for refusing or neglecting to convey mails. XII. And be it enacted, that if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter-bags, when tendered to them for such purpose by the postmaster general or any officer of the post office, or shall refuse to carry on their railway any mail-coaches, carts, or carriages as hereinbefore provided, when so required by the postmaster general, or shall refuse or neglect to receive, take up,

deliver, and leave any such mails or post letter-bags, mail guards, or other officers of the post office, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the postmaster general shall from time to time reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter-bags, mail coaches, carts, and carriages on any such railways as the postmaster general, or such officer of the post office as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or effect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

XIII. And be it enacted, that it shall be lawful for the postmaster general, if he shall so think fit, to require the company of proprietors of any railway already made, or in progress, or to be hereafter made within the United Kingdom, to give security by bond to her Majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter-bags, mail guards, or other officers of the post office, mail coaches, carts, and carriages in manner hereinbefore mentioned, when thereunto required by the postmaster general, or any officer of the post office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter-bags, guards, and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the postmaster general shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things as by this act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, or agents; and every such bond shall be taken in such sum and in such form as the postmaster general shall think proper; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, and also whenever and so often as the postmaster general shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid

Postmaster general may require railway companies to give security by bond.

shall, when so required as aforesaid, refuse or neglect, space of one calendar month next after the delivery of an for such purpose to them given by or from the postmaster, to execute to her Majesty, her heirs and successors bond to the effect and in manner aforesaid, or shall at a refuse or neglect to renew such bond whenever and so the same shall, by or in pursuance of this act, be required renewed, such company of proprietors shall forfeit one pounds for every day during the period for which there any refusal, neglect, or default, to give or renew such as aforesaid, after the expiration of the said one calendar

Lessees of railway, not being a body corporate or company, not to be required to give security by bond above 1000/.

XIV. Provided always, and be it enacted, that in all which any railway or part of a railway may, previous passing of this act, have been demised or let by the company of proprietors thereof, the body corporate or company, persons to whom the same shall have been so demised or successors, executors, administrators, or assigns, shall the continuance of such lease be liable to all the provisions of this act, for or in respect of such railway or part of a railway in lieu of such company of proprietors, but so that such persons (not being a body corporate or company), their executors, administrators, or assigns, shall not be required in respect of such railway or part of a railway to give security under the foregoing enactment to any amount in one bond exceeding the sum of one thousand pounds, and shall not in any one case be liable in damages to be recovered upon any bonds which they may have given to any amount not exceeding the sum of one thousand pounds and costs of suit.

Service of notices.

XV. And be it enacted, that all notices under the provisions of this act by or on behalf of the postmaster general to any company of proprietors of any railway as aforesaid, considered as duly served on any company of proprietors if the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

For settling differences between postmaster general and railway companies in certain cases.

XVI. And be it enacted, that in all cases in which the postmaster general and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the postmaster general to such company of proprietors for any services performed or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the postmaster general and the other by such company; and if the two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person to be appointed by such two first-named persons previously

entering upon the inquiry ; and the said award or umpirage, as the case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

XVII. And be it enacted, that after any contract entered into or award made under the authority of this act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein ; and thereupon such arbitrators or umpire, to be appointed as hereinbefore mentioned, shall proceed to inquire into the circumstances and make their award therein, as in the case of an original agreement : Provided always, that the services performed by such railway company for the post office shall in nowise be interrupted or impeded thereby.

XVIII. And be it enacted, that in all references to be made under the authority of this act, the postmaster general, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or, in default, it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator ; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire ; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so *toties quoties*.

XIX. And be it enacted, that whenever the term "company of proprietors," or "railway company," or "company," is used in this act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate, or company, or individuals, to whom any railway or part of a railway may previous to the passing of this act have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction ; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in an act passed in the first year of the reign of her present Majesty, in-

**I Vict. c.36.** titled “ An Act for consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the judicial Administration of the Post Office Laws, and for explaining certain Terms and Expressions employed in those Laws ; ” so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions ; and that this present act shall be deemed and construed to be a post office act, within the intent and meaning of the said last-mentioned act ; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the post office acts : Provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this act shall have been incurred, shall and may hear and determine any offence against this act which may subject any company to a pecuniary penalty not exceeding twenty pounds ; and a summons issued under the post office acts by any such justice against any railway company, for the recovery of any such penalty, shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

Act may be amended or repealed.

**XX.** And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

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**1 & 2 VICT. CAP. 117.**

*An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the authority of Parliament.*

Authority to deposit.

**WHEREAS** it is expedient to provide for the custody of any sums of money paid in pursuance of any standing order of the lords spiritual and temporal in Parliament assembled, or of the commons in Parliament assembled, by subscribers to works or undertakings to be made under the authority of an act of Parliament ; be it therefore enacted, by the Queen’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that in all cases in which any sum of money is required by any standing order of either House of Parliament, either now or hereafter to be in force, to be paid by the subscribers to any work or undertaking which is to be executed under the authority of an act of



Parliament, if the director or person, or directors or persons having the management of the affairs of any such proposed work or undertaking, or any five of them, shall apply to the chairman of the committees of the House of Lords with respect to any such money required by any standing order of the Lords spiritual and temporal in Parliament assembled, or to the speaker of the House of Commons with respect to any such money required by any standing order of the Commons in Parliament assembled, the said chairman or the said speaker may, by warrant or order under his hand, direct that such sum of money shall be paid in manner hereinafter mentioned; that is to say, into the Bank of England in the name and with the privity of the accountant-general of the Court of Exchequer in England, if the work or undertaking in respect of which the sum of money is required to be paid is intended to be executed in that part of the United Kingdom called England; or into the Bank of England in the name and with the privity of the said accountant-general, or into any of the banks in Scotland established by act of Parliament or royal charter in the name and with the privity of the Queen's remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland; or into the Bank of Ireland in the name and with the privity of the accountant-general of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and every such application as aforesaid to the said chairman or speaker shall be made in writing, and be signed by the director or directors, or person or persons, having the management of the said work or undertaking, or by any five of them; and therein shall be stated the name or description of such work or undertaking, and name and place of abode or the names and places of abode of such director or directors, person or persons, and the sum of money required to be paid, and the bank and name into and in which the same is to be paid; and such particulars shall also be set forth in every such warrant or order; and such warrant or order shall be a sufficient authority for the accountant-general of the said Court of Exchequer in England, the Queen's remembrancer of the Court of Exchequer in Scotland, and the accountant-general of the Court of Chancery in Ireland respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

II. And be it enacted, that it shall be lawful for the person or persons named in such warrant or order, or the survivors or deposit. survivor of them, or any five of them, to pay the sum of money

mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there ex-parte the work or undertaking mentioned in such warrant or order ; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, shall there remain until the same or such securities as aforesaid shall be paid out of such bank in pursuance of the provisions of this act : Provided always, that every sum paid into the Bank of England in the name and with the privity of the accountant-general of the Court of Exchequer under the provisions of this act, shall be paid in and placed to his account there pursuant to the method prescribed by an act passed in the first year of the reign of his late Majesty King George the Fourth, intituled,

- 1 G. 4. c. 35. "An Act for the better securing Money and Effects paid into the Court of Exchequer at Westminster on account of the Suitors of the said Court, and for the Appointment of an Accountant-general and two Masters of the said Court, and for other purposes," and pursuant to the general orders of the said court, and without fee or reward ; and every sum paid into the Bank of Ireland in the name and with the privity of the accountant-general of the Court of Chancery in Ireland, under the provisions of this act, shall be paid in and placed to his account pursuant to the method prescribed by an act made and passed in the Parliament of Ireland in the twenty-third and twenty-fourth years of the reign of his late Majesty King George the Third, intituled, "An Act for the better securing the Monies and Effects of the Suitors of the Court of Chancery and Exchequer, by depositing the same in the National Bank, and to prevent the forging and counterfeiting any Draft, Order or other Voucher for the Payment or Delivery of such Money and Effects, and for other purposes," and pursuant to the general orders of the said court, and without fee or reward.

Investment  
of deposit.

III. And be it enacted, that if the person or persons named in such warrant or order, or the survivor or survivors of them, or any five of them, desire to have invested any sum so paid into the Bank of England or the Bank of Ireland, the Court in the name of whose accountant-general the same may have been paid, on a petition presented to such Court in a summary way by him or them, may order that such sum shall, until the same be paid out of Court in pursuance of this act, be laid out in the Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or any government security or securities.

Repayment  
of deposit.

IV. And be it enacted, that on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have

been introduced into Parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either House of Parliament, or shall not be allowed to proceed, or if an act be passed authorizing the making of such work or undertaking; and if in any or either of the foregoing cases the person or persons named in such warrant or order, or the survivor or survivors of them, or the majority of such persons, apply by petition to the Court in the name of whose accountant-general the sum of money mentioned in such warrant or order shall have been paid, or to the Court of Exchequer in Scotland in case such sum of money shall have been paid in the name of the said Queen's remembrancer, the Court in the name of whose accountant-general or Queen's remembrancer such sum of money shall have been paid shall, by order, direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds or securities in or upon which the same are invested, and the interest or dividends thereof, to be transferred and paid to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected, or not being allowed to proceed, or withdrawn, unless it be proved by the certificate of the chairman of committees, if the said petition or bill was rejected or not allowed to proceed, or withdrawn in its passage through the House of Lords, or of the said speaker, if the said petition or bill was rejected or not allowed to proceed or withdrawn during its passage through the House of Commons, that the petition or bill has been either so rejected, or not allowed to proceed, or so withdrawn by some proceeding in one or other House of Parliament; which certificate the said chairman or speaker shall grant on the application in writing of the person or persons, or the majority of the persons, named in such warrant or order, or the survivor or survivors of them; and every such certificate shall be conclusive proof of such rejection, or not proceeding, or withdrawal.

(a) See as to applications for the payment of the money out of Court; *Ex parte Wilkinson*, 4 Railway Cases.

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9 VICT. CAP. 20.

*An Act to amend an Act of the Second Year of Her present Majesty, for providing for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament.*

[18th June, 1846.]

1 & 2 Vict.  
c. 117.

Recited act  
repealed.  
Monies al-  
ready paid  
in to be  
dealt with as  
directed by  
former act.

Authority  
to deposit.

WHEREAS an act was passed in the second year of the reign of Her present Majesty Queen Victoria, intituled *An Act to provide for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament*: and whereas it is expedient that the said act should be repealed, and should be re-enacted, with such modifications, extensions, and alterations as after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said act shall be and is hereby repealed: Provided always, that all acts done under the provisions of the said act shall be good, valid, and effectual to all intents and purposes, and that all sums of money paid under the provisions of the said act shall be dealt with in all respects as if this act had not been passed.

II. And be it enacted, that in all cases in which any sum of money is required by any standing order of either house of Parliament, either now in force or hereafter to be in force, to be deposited by the subscribers to any work or undertaking, which is to be executed under the authority of an Act of Parliament, if the director or person, or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the Parliaments with respect to any such money required by any standing order of the Lords spiritual and temporal in Parliament assembled, or to one of the clerks of the private bill office of the House of Commons with respect to any such money required by any standing order of the Commons in Parliament assembled, to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand, to direct that such sum of money shall be paid in manner herein-after mentioned; (that is to say,) into the Bank of *England*, in the name and with the privity of the accountant general of the Court of Chancery in *England*, if the work or undertaking in respect of which the sum of money is required to be

deposited is intended to be executed in that part of the United Kingdom called *England*, or into any of the banks in *Scotland* established by act of Parliament or royal charter, in the name and with the privity of the Queen's remembrancer of the Court of Exchequer in *Scotland*, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called *Scotland*, or into the bank of *Ireland*, in the name and with the privity of the accountant general of the Court of Chancery in *Ireland*, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called *Ireland*; and such warrant or order shall be a sufficient authority for the accountant general of the court of Chancery in *England*, the Queen's remembrancer of the court of exchequer in *Scotland*, and the accountant general of the Court of Chancery in *Ireland*, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

III. And be it enacted, that it shall be lawful for the person Payment of  
or persons named in such warrant or order, or the sur- deposit.  
vivors or survivor of them, to pay the sum mentioned in such  
warrant or order into the bank mentioned in such warrant or  
order in the name and with the privity of the officer or person  
in whose name such sum shall be directed to be paid by such  
warrant or order, to be placed to his account there *ex parte* the  
work or undertaking mentioned in such warrant or order, pur-  
suant to the method prescribed by any act or acts for the time  
being in force for regulating monies paid into the said courts,  
and pursuant to the general orders of the said courts respectively,  
and without fee or reward; and every such sum so paid in, or  
the securities in or upon which the same may be invested as  
herein-after mentioned, or the stocks, funds, or securities autho-  
rized to be transferred or deposited in lieu thereof as herein-  
after mentioned, shall there remain until the same, with all  
interest and dividends, if any, accrued thereon, shall be paid out  
of such bank, in pursuance of the provisions of this act: pro-  
vided always, that in case any such director or person, directors  
or persons, having the management of any such proposed work  
or undertaking as aforesaid, shall have previously invested in  
the three *per Centum* consolidated or the three *per Centum* re-  
duced bank annuities, exchequer bills or other government  
securities, the sum or sums of money required by any such  
standing order of either House of Parliament as aforesaid to be  
deposited by the subscribers to any work or undertaking which  
is to be executed under the authority of an act of Parliament, it  
shall be lawful for the person or persons named in such warrant  
or order, or the survivors or survivor of them, to deposit such

exchequer bills or other government securities in the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall by such warrant or order be directed to be paid, or to transfer such government stock or funds into the name of the officer or person; and such transfer or deposit shall be directed by such clerk of the office of the clerk of the Parliaments, or such clerk of the private bill office of the House of Commons, as the case may be, in lieu of payment of so much of the sum of money required to be deposited as aforesaid as the same exchequer bills, or other the government stock or funds will extend to satisfy at the price at which the same were originally purchased by the said person or persons, director or directors as aforesaid, such price to be proved by production of the broker's certificate of such original purchase.

Investment  
of deposit.

IV. And be it enacted, that if the person or persons named in such warrant or order, or the survivors or survivor of them, desire to have invested any sum so paid into the Bank of *England* or the Bank of *Ireland*, or any interest or dividend which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the Court in the name of whose accountant general the same may have been paid may, on a petition presented to such Court in a summary way by him or them, order that such sum or such interest or dividends shall, until the same be paid out to the parties entitled to the same in pursuance of this act, be laid out in the three *per Centum* consolidated or three *per Centum* reduced bank annuities, or any government security or securities, at the option of the aforesaid person or persons, or the survivor or survivors of them.

Repayment  
of deposit.

V. And be it enacted, that on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into Parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either house of Parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an act be passed authorizing the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition to the court in the name of whose accountant general the sum of money mentioned in such warrant or order shall have been paid, or such exchequer bill, stocks, or funds shall have been deposited or transferred as aforesaid, or to the Court of Exchequer in *Scotland*, in case such sum of money shall have been paid in the name of the said Queen's remembrancer, the

name of whose accountant general or Queen's re-  
such sum of money shall have been paid, or such  
bills, stocks or funds shall have been deposited or  
shall by order direct the sum of money paid in pur-  
ch warrant or order, or the stocks, funds, or securi-  
on which the same may have been invested, and the  
dividends thereof, or the exchequer bills, stocks, or  
sited or transferred as aforesaid, and the interest and  
thereof, to be paid or transferred to the party or parties  
or to any other person or persons whom they may  
act on behalf; but no such order shall be made in the  
such petition or bill being rejected or not being  
proceed, or being withdrawn or not being presented,  
being passed authorizing the making of such work-  
ing, unless upon the production of the certificate of  
of committees of the House of Lords with refer-  
proceeding in the House of Lords, or of the speaker  
of Commons with reference to any proceeding in  
Commons, that the said petition or bill was  
not allowed to proceed, or was withdrawn during  
the course of one of the houses of Parliament, or was not  
that such act was passed, which certificate the  
Chairman or speaker shall grant on the application in writ-  
ing of one or persons, or the majority of the persons  
in a warrant, or the survivor or survivors of them :  
And it is enacted, that the granting of any such certificate, or  
any error therein or in relation thereto, shall not  
make the Chairman or speaker signing the same liable in respect  
of stocks, funds, and securities which may be paid,  
invested, or transferred in pursuance of the provi-  
sion, or the interest or dividends thereof.

Granting  
Certificate,  
&c. not to  
make the  
Chairman  
or Speaker  
signing the  
same liable.



## 2 &amp; 3 VICT. CAP. 45.

*End an Act of the Fifth and Sixth Years of the  
late Majesty King William the Fourth, relating  
to the same.*  
[17th August, 1839.]

an act passed in the session of Parliament holden  
in the sixth years of the reign of his late Majesty king  
William the fourth, intituled "An Act to consolidate and  
amend the several Acts relating to the same."

5 & 6 Wm. 4.  
c. 50.

amend the Laws relating to Highways in that part of Britain called England," it is amongst other things by act enacted, that whenever a railroad shall cross any high carts or carriages, the proprietors of the said railroad shall and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to attend opening and shutting of such gates, so that the persons or carriages passing along such road shall not be exposed to danger or damage by the passing of any carriages or along the said railroad; and any complaint for any neglect in respect of the said gates shall be made within one month after the said neglect to one justice, who may summon the party so complained against to appear before the justices at the next special session for the highways, who shall hear and determine upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds: and when also by the said act further enacted, that nothing in the said act contained shall apply to any turnpike roads, except as expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, yards, or pavements which now are or may hereafter be repaired, or cleansed, broken up or diverted, under or otherwise than the provisions of any local or personal act or acts of Parliament in that behalf made: and whereas it is deemed expedient to amend the provisions in the said act, and to extend the same to all roads in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in that behalf assembled, and by the authority of the said Queen, that whosoever a railroad crosses or shall hereafter cross any road or any highway or statute-labour road for carts or carriages in Great Britain, the proprietors or directors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike road as aforesaid at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the road; and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or if in Scotland to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty sessions or court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pounds, together with such costs as to the

Proprietors  
of railroad  
to maintain  
gates where  
any railroad  
crosses the  
highway,  
&c.

See act 5 &  
6 Vict. c. 55.

Penalty 5*l.*  
for each  
day's ne-  
glect.



te aforesaid before whom the conviction shall take  
seem fit.

Be it further enacted, that the penalties by this act How penal-  
d the costs to be allowed and ordered by the autho- ties shall be  
act, shall in England be recovered and applied in the recovered  
r as any penalties and costs under the said act, and and applied.  
shall be recovered and applied to the maintenance  
te labour roads within the district where the offence  
l.

Be it further enacted, that this act shall commence Commence-  
act from and after the thirtieth day of September, ment of act.  
d eight hundred and thirty-nine.



## 3 &amp; 4 VICT. CAP. 97.

*t for regulating Railways.* [10th August, 1840.

it is expedient for the safety of the public to provide  
supervision of railways : Be it therefore enacted by  
most excellent Majesty, by and with the advice and  
the lords spiritual and temporal, and commons, in  
Parliament assembled, and by the authority of the  
after two months from the passing of this act, no No railway  
portion of any railway, shall be opened for the public to be opened  
of passengers or goods until one calendar month without no-  
in writing of the intention of opening the same shall tice to the  
given, by the company to whom such railway shall Board of  
the lords of the committee of her Majesty's privy Trade.  
ointed for trade and foreign plantations.

Be it enacted, that if any railway, or portion of any Penalty for  
all be opened without due notice as aforesaid, the opening  
whom such railway shall belong shall forfeit to her railways  
sum of twenty pounds for every day during which without no-  
shall continue open, until the expiration of one tice.  
onth after the company shall have given the like no-  
rein-before required before the opening of the rail-  
any such penalty may be recovered in any of her  
courts of record.

Be it enacted, that the lords of the said committee Returns to  
and direct every railway company to make up and be made by  
hem returns, according to a form to be provided by railway  
companies.

See act 5 &  
6 Vict. c. 55.  
s. 7, 8.

the lords of the said committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway; and if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her Majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record: Provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings.

Penalty for  
making  
false re-  
turns.

IV. And be it enacted, that every officer of any company who shall wilfully make any false return to the lords of the said committee shall be deemed guilty of a misdemeanor.

Board of  
'Trade may  
appoint per-  
sons to in-  
spect rail-  
ways.

V. And be it enacted, that it shall be lawful for the lords of the said committee, if and when they shall think fit to authorize any proper person or persons to inspect any railway, and it shall be lawful for every person so authorized, at all reasonable times upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging hereto: Provided always, that no person shall be eligible to the appointment as inspector as aforesaid who shall within one year of his appointment have been a director or have held any office of trust or profit under any railway company.

Penalty  
on persons  
obstructing  
inspector.

VI. And be it enacted, that every person wilfully obstructing any person, duly authorized as aforesaid, in the execution of his duty, shall on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and on default of payment of any penalty so adjudged, immediately or within such time as the said justice of the peace shall appoint, the same justice or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months: such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

And whereas many railway companies are or may here-  
 empowered by act of Parliament to make bye-laws,  
 rules, or regulations, and to impose penalties for the  
 breach thereof, upon persons other than the servants of the  
 companies, and it is expedient that such powers should be  
 under proper control; be it enacted, that true copies of all such  
 bye-laws, orders, rules, and regulations made under any such  
 act by every such company before the passing of this act,  
 in such manner as the lords of the said committee shall  
 from time to time direct, shall within two calendar months after  
 the passing of this act, be laid before the lords of the said com-  
 mittee, and that every such bye law, order, rule or regulation,  
 made before the lords of the said committee within the  
 said period, shall, from and after that period, cease to have  
 any force or effect, saving in so far as any penalty may have  
 been already incurred under the same.

Copies of  
 existing  
 bye laws  
 to be laid  
 before the  
 Board of  
 Trade;

otherwise  
 to be void.

And be it enacted, that no such bye-law, order, rule  
 or regulation made under any such power, and which shall not  
 be in force at the time of the passing of this act, and no order,  
 rule, or regulation annulling any such existing bye-law, rule,  
 or regulation which shall be made after the passing of  
 this act, shall have any force or effect until two calendar months  
 after they have been laid before the Board of Trade.  
 A copy of such bye-law, order, rule or regulation, cer-  
 tified by the said committee, shall have been laid before the  
 lords of the said committee, unless the lords of the said com-  
 mittee, within the said period, signify their approbation thereof.

No future  
 bye-laws to  
 be valid till  
 two calen-  
 dar months  
 after they  
 have been  
 laid before  
 the Board  
 of Trade.

And be it enacted, that it shall be lawful for the lords of  
 the said committee at any time either before or after any bye-  
 law, order, rule, or regulation shall have been laid before them,  
 to disallow any such bye-law, order, rule, or regulation, and  
 to signify their disallowance thereof, and that any such bye-law,  
 order, rule, or regulation shall have come into operation to notify to the com-  
 mittee, and that the same shall be in force at the time of such dis-  
 allowance, and shall cease to be in force at the time at which the same shall  
 cease to be in force; and that any such bye-law, order, rule, or regulation  
 which shall be so disallowed, shall have no force or effect whatsoever,  
 or if it shall be in force at the time of such disallowance, it shall  
 cease to have any force or effect at the time limited in the notice of such  
 disallowance, saving in so far as any penalty may have been then  
 incurred under the same.\*

Board of  
 Trade may  
 disallow  
 bye laws.

And be it enacted, that so much of every clause, provi-  
 sion, or enactment, in any act of Parliament heretofore passed  
 which requires the approval or concurrence of any justice of  
 the peace, court of quarter sessions, or other person or persons,  
 in order to give effect to any bye-law, order, rule, or regulation,  
 made by any railway company, as is inconsistent with the  
 provisions of this act, shall be void, and that the provisions of  
 this act shall have effect notwithstanding anything to the contrary  
 contained in any such act.

Provisions  
 of railway  
 acts re-  
 quiring  
 confirma-  
 tion of bye-  
 laws re-  
 pealed.

other than members of the said companies to give val any bye-laws, orders, rules or regulations made by a company, shall be repealed.

Board of Trade may direct prosecutions to enforce provisions of railway acts.

Notice to be given to the company.

Prosecutions to be commenced under authority of Board of Trade, and within one year after offence.

Power of arrest of persons on railway who are drunk.

XI. And be it enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any of the said companies, or the provisions of this act have not been complied with by any of the said companies, or any of their officers, or that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her Majesty's attorney for England or Ireland, or to the lord advocate for Scotland, as the case may require, and thereupon the said attorney or lord advocate shall, by information, or by action, bill, or suit at law or in equity, or other legal proceeding, as he may require proceed to recover such penalties and for or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance or otherwise authorized to sue for such penalties may employ under the provisions of the said acts: provided that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to proceed.

XII. And be it enacted, that no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against any of the several acts of Parliament relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

XIII. And be it enacted, that it shall be lawful for any constable or agent of any railway company, or for any special constable duly appointed, and all such persons as they may require in their assistance, to seize and detain any engine driver, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver

er, or other servant so offending or any person counselling, ag, or assisting in such offence, with all convenient dispatch, ore some justice of the peace for the place within such offence l be committed, without any other warrant or authority than act; and every such person so offending, and every person nselling, aiding, or assisting therein as aforesaid, shall when victed before such justice as aforesaid (who is hereby autho- ad and required, upon complaint to him made, upon oath, out information in writing, to take cognizance thereof, and ct summarily in the premises), in the discretion of such jus- t, be imprisoned, with or without hard labour, for any term exceeding two calendar months, or in the like discretion of h justice, shall for every such offence forfeit to her Majesty sum not exceeding ten pounds, and in default of payment reof shall be imprisoned, with or without hard labour as resaid, for such period, not exceeding two calendar months, such justice shall appoint; such commitment to be deter- ed on payment of the amount of the penalty; and every h penalty shall be returned to the next ensuing court of arter sessions in the usual manner.

**XIV.** Provided always, and be it enacted, that (if upon the Justice of the peace  
ring of any such complaint he shall think fit) it shall be law- empowered  
for such justice, instead of deciding upon the matter of com- to send any  
int summarily, to commit the person or persons charged with case to be  
h offence for trial for the same at the quarter sessions for the tried by the  
nty or place wherein such offence shall have been committed quarter ses-  
l to order that any such person so committed shall be im- sions.  
soned and detained in any of her Majesty's gaols or houses of  
rection in the said county or place in the mean time, or to  
s bail for his appearance, with or without sureties, in his dis-  
ion; and every such person so offending, and convicted be-  
; such court of quarter sessions as aforesaid (which said court  
ereby required to take cognizance of and hear and determine  
h complaint), shall be liable, in the discretion of such court,  
e imprisoned, with or without hard labour, for any term not  
eding two years.

**XV.** And be it enacted, that from and after the passing of Punishment  
act, every person who shall wilfully do or cause to be done of persons  
thing in such manner as to obstruct any engine or carriage obstructing  
ng any railway, or to endanger the safety of persons conveyed railway.  
r upon the same, or shall aid or assist therein, shall be guilty  
; misdemeanor, and being convicted thereof shall be liable, at  
discretion of the court before which he shall have been con-  
ed, to be imprisoned, with or without hard labour, for any  
n not exceeding two years.

**XVI.** And be it enacted, that if any person shall wilfully ob- For punish-  
e ment of per-

other than members of the said companies to give val any bye-laws, orders, rules or regulations made by a company, shall be repealed.

Board of Trade may direct prosecutions to enforce provisions of railway acts.

XI. And be it enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of several acts of Parliament regulating any of the said companies, or the provisions of this act have not been complied with, or that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her Majesty's attorney-general for England or Ireland, or to the lord advocate for Scotland, as the case may require, and thereupon the said attorney-general or lord advocate shall, by information, or by action, bill, writ, or suit at law or in equity, or other legal proceeding, as it may require proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance or otherwise authorized to sue for such penalties may employ under the provisions of the said acts: provided that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the railway company against or in relation to whom they shall intend to enforce the same.

Notice to be given to the company.

Prosecutions to be under sanction of Board of Trade, and within one year after offence.

XII. And be it enacted, that no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against any act, or any of the several acts of Parliament relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence has been committed.

Punishment of servants of railway companies guilty of misconduct.

XIII. And be it enacted, that it shall be lawful for a constable or other officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may employ for their assistance, to seize and detain any engine driver, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver,

her, or other servant so offending or any person counselling, abetting, or assisting in such offence, with all convenient dispatch, to send some justice of the peace for the place within such offence to be committed, without any other warrant or authority than the oath of such justice; and every such person so offending, and every person counselling, abetting, or assisting therein as aforesaid, shall when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made, upon oath, to take cognizance thereof, and to commit summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or in the like discretion of such justice, shall for every such offence forfeit to her Majesty a sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

IV. Provided always, and be it enacted, that (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of commitment summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed to order that any such person so committed shall be imprisoned and detained in any of her Majesty's gaols or houses of correction in the said county or place in the mean time, or to bail for his appearance, with or without sureties, in his discretion; and every such person so offending, and convicted before such court of quarter sessions as aforesaid (which said court is hereby required to take cognizance of and hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

Justice of the peace empowered to send any case to be tried by the quarter sessions.

V. And be it enacted, that from and after the passing of this act, every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage on any railway, or to endanger the safety of persons conveyed thereupon the same, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years.

Punishment of persons obstructing railway.

VI. And be it enacted, that if any person shall wilfully ob-

For punishment of per-

sons obstructing the officers of any railway company, or trespassing upon any railway.

struct or impede any officer or agent of any railway in the execution of his duty upon any railway, or upon, or of the stations or other works or premises connected with any railway, or if any person shall wilfully trespass upon any railway, or of the stations or other works or premises connected with any railway, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, may be seized and detained by any such officer or agent, or by any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence was committed, and when convicted before such justice of the peace (who is hereby authorized and required, upon complaint made upon oath, to take cognizance thereof and to act summarily upon the premises), shall, in the discretion of such justice of the peace, be liable to pay to her Majesty any sum not exceeding five pounds, and if no payment thereof shall or may be made, may be imprisoned for a term not exceeding two calendar months, such imprisonment to be determined by payment of the amount of the penalty.

Proceedings not to be quashed for want of form or removed into the superior courts.

XVII. And be it enacted, that no proceeding taken in pursuance of this act shall be quashed or set aside for want of form, or be removed by certiorari, or by writ or process whatsoever, into any of her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

Repeal of all provisions in railway acts that empower two justices to decide disputes respecting the proper places for openings in the ledges or flanches of railways.

XVIII. And whereas many railway companies are incorporated or regulated, to make at the expense of the occupier of lands adjoining the railway openings in the ledges or flanches thereof (except at certain places on such railway as the said acts specified), for effecting communication between such railway and any collateral or branch railway, and any disagreement or difference shall arise as to the proper places for making such openings, the decision of any two justices of the peace within the respective jurisdictions : and whereas it is expedient that every clause, provision and enactment in any act or statute heretofore passed, as gives to any justice or justices of the peace power of hearing or deciding upon any such disagreement as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed ; be it enacted, that so much of every such clause, provision or enactment as aforesaid shall be repealed.

Board of Trade to

XIX. And be it enacted, that in case any disa-



disputes shall arise between any such owner or occupier or determine persons, and any railway company, as to the proper such disputes for any such openings in the ledges or flanches of any pipes in y (except at such places as aforesaid), for the purpose of future communication, then the same shall be left to the decision of the lords of the said committee, who are hereby empowered to order and determine the same in such way as they shall think fit, and their determination shall be binding on all parties.

1. And be it enacted, that all notices, returns, and other Communications required by this act to be given to or laid before the of the said committee, shall be delivered at or sent by the the Board to the office of the lords of the said committee; and all be left at s, appointments, requisitions, certificates or other docu- their office. in writing, signed by one of the secretaries of the said Communi- ittee, or by some other person appointed for that purpose cations by the lords of the committee, and purporting to be made by the Board ds of the said committee, shall for the purposes of this how to be deemed to have been made by the lords of the said com- authenti- ; and service of the same upon any one or more of the cated. rs of any railway company, or on the secretary or clerk What shall said company, or by leaving the same with the clerk or be deemed at one of the stations belonging to the said company, good service e deemed good service upon the said company. on railway company.

I. And be it enacted, that wherever the word "railway" Meaning of l in this act it shall be construed to extend to all railways the words ucted under the powers of any act of Parliament, and in- "railway" l for the conveyance of passengers in or upon carriages and "com- or impelled by the power of steam or by any other pany." nical power; and wherever the word "company" is used act, it shall be construed to extend to and include the etors for the time being of any such railway, whether a orporate or individuals, and their lessees, executors, ad- rators, and assigns, unless the subject or context be repug- to such construction.

II. And be it enacted, that this act may be amended or Act may be ed by any act to be passed in the present session of Par- repealed t. this session.

5 & 6 VICT. CAP. 55.

*An Act for the better Regulation of Railways, and for the Conveyance of Troops.*  
30th July, 1842.

3 & 4 Vict. c. 97.      WHEREAS by an act passed in the third and fourth years of the reign of her present Majesty, intituled "An Act for regulating Railways," provision was made for the supervision of railways; And whereas it is expedient for the safety of the public to make further provision for that purpose; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that this act shall come into operation at the passing thereof.

Recited act and this act to be construed together.      II. And be it enacted, that the provisions of the said recited act and of this act shall be construed together as one act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act.

Notice before opening railway repealed.      III. And whereas by the said recited act it is enacted, that after two months from the passing of the said recited act no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations: and whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is herein-before required before the opening of the railway, and any such penalty may be recovered in any of her Majesty's courts of record; be it enacted, that the said recited provisions of the said act shall be and they are hereby repealed.

Notice of intended opening of railway.      IV. And be it enacted, that no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the lords of the

said committee, of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection.

V. And be it enacted, that if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired ; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland. If railway opened without notice company to forfeit 20*l*.

VI. And be it enacted, that if the officer or officers appointed by the lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the lords of the said committee, and so from time to time, as often as such officers shall after further inspection thereof so report, to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the lords of the said committee that such opening may take place without danger to the public ; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the lords of the said committee, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction ; and any such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland : Provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded. Board of Trade empowered to postpone the opening.

VII. And be it enacted, that every railway company shall within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to the public using the same, give notice thereof to the lords of the said committee ; and if any company shall wilfully omit to give such notice, every such company shall forfeit to her Majesty the sum of five pounds for every day. Notice of accidents to be given to the Board of Trade.

during which the omission to give the same shall continue; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland.

Board of  
Trade em-  
powered to  
direct re-  
turns.

VIII. And be it enacted, that the lords of the said committee may order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the lords of the said committee shall deem necessary and require for their information with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit to her Majesty the sum of five pounds for every day during which the said company shall neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland: Provided always, that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

Gates at  
level cross-  
ings to be  
kept closed  
across the  
road.  
2 & 3 Vict.  
c. 45.

IX. And whereas by an act passed in the second and third years of her present Majesty, and intituled, "An Act to amend an Act of the Fifth and Sixth Years of his late Majesty King William the Fourth relating to Highways," it was enacted, that whenever a railway crosses, or shall hereafter cross any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway. And whereas by the acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road: And whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway: Be it therefore enacted, that notwithstanding anything to the contrary contained in any act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway; and such gates

such dimensions, and so constructed as, when closed, to prevent cattle or horses passing along the road upon the railway while the gates are closed: and it shall be lawful for the lords of the said committee, in any case in which they are satisfied that it will be for the public safety that the gates at any level of any such turnpike or other road should be kept closed instead of across the road; and such lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company in any order is addressed, for keeping such gates closed, or directed by the lords of the said committee.

Proviso.

whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways, enacted, that all railway companies shall be under a liability of obligation to erect, and to maintain and repair, and sufficient fences throughout the whole of their lines, as they would have been if every part of such lines had been originally ordered to be made under an order of the Board of Trade in virtue of the provisions to that effect in the acts of relating to such railways respectively.

Railway companies to erect and maintain fences.

And be it enacted, that where two or more railway companies have a common terminus or a portion of the line of rails in common, or which form separate portions of a continued line of railway communication, shall not agree upon arrangements for conducting at such terminus or at the point of junction between them, traffic with safety to the public, it shall be lawful for the lords of the said committee, upon the application of either of the said companies, to decide the questions in dispute between them, where the same relate to the safety of the public, and to determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by the said companies respectively; and if any railway company wilfully neglect to obey any such order made in pursuance of this provision, such company shall forfeit to the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every sum so recovered may be recovered in any of her Majesty's courts of law, or in the court of session, or in any of the sheriffs' courts in Scotland.

Disputes between connecting railways to be decided by the Board of Trade.

And whereas powers of laying down branch lines open- Powers of making branch  
ledges or flanches of main lines of railway, and of

communications with railways, and of entering upon them with locomotive engines, to be regulated by the Board of Trade.

Defining a passenger railway.

Alteration of dangerous level crossings.

entering upon or passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent : and whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway ; be it therefore enacted, that if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the lords of the said committee shall direct : Provided always, that no railway shall be considered a passenger railway if two-thirds or more of the gross annual revenue of such railway shall be derived from the carriage thereon of coals, iron-stone, or other metals or minerals.

XIII. And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some case be willing, at their own expense, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do : and whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid ; be it therefore enacted, that in all cases where any railway company shall be willing, at their own expense, to carry any turnpike road, highway, or private road or tramway over or under the railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge or by such other arrangement as the nature of the case shall require, subject to such conditions as the lords of the said committee shall direct.

XIV. And whereas it is essential for the public safety, and Power for  
 so for the proper maintenance of railways in a state of ef- railway  
 ficiency for the public service, that railway companies should companies  
 ve the power, in case of accidents or slips happening, or being to enter  
 apprehended, to their cuttings and embankments or other works, upon ad-  
 enter upon the lands adjoining their respective railways, for joining  
 e purpose of repairing or renewing the same, and to do such lands to  
 orks as may be necessary for the purpose; be it therefore repair acci-  
 acted, that it shall be lawful for the lords of the said com- dents.  
 mittee to empower any railway company, in case of any acci-  
 nt or slip happening or being apprehended to any cutting,  
 bankment, or other work belonging to them, to enter upon  
 y lands adjoining their railway for the purpose of repairing  
 preventing such accident, and to do such works as may be  
 cessary for the purpose: Provided always, that in case of ne-  
 ssity it shall be lawful for any railway company to enter upon  
 ch lands and do such works as aforesaid, without having ob-  
 ined the previous sanction of the lords of the said committee;  
 it in every such case such railway company shall, within forty-  
 ght hours after such entry, make a report to the lords of the  
 id committee, specifying the nature of such accident or appre-  
 nded accident, and of the works necessary to be done, and  
 ch powers shall cease and determine if the lords of the said  
 mmittee shall, after considering the said report, certify that  
 eir exercise is not necessary for the public safety: Provided  
 so that such works shall be as little injurious to the said ad-  
 ining lands as the nature of the accident or apprehended  
 cident will admit of, and shall be executed with all possible  
 spatch: and full compensation shall be made to the owners  
 id occupiers of such lands for the loss or injury or inconve-  
 nience sustained by them respectively by reason of such works  
 e amount of which compensation, in case of any dispute about  
 e same, shall be settled in the same manner as cases of dis-  
 uted compensation are directed to be settled by the acts relat-  
 g to the railway on which such works may become necessary:  
 rovided always, that no land shall be taken permanently by  
 y railway company for such works without a certificate from  
 e lords of the said committee as hereinafter described.

XV. And whereas by various acts relating to railways, com- Compul-  
 lsory powers are given to railway companies of purchasing sory powers  
 id taking lands for the construction of such railways, and it is of taking  
 rovided that such compulsory powers shall not be exercised land for the  
 ter the expiration of certain limited periods from the pass- purposes of  
 g of the said acts: and whereas it is sometimes found neces- railways  
 ry for the public safety that additional land should be taken extended,  
 ter the expiration of such periods for the purpose of giving where  
 creased width to the embankments and inclination to the thought ne-  
 opes of railways, or for making approaches to bridges or arch- cessary for  
 the Board  
 of Trade.

ways, or for doing such works for the repair or prevention of accidents as are hereinbefore described ; be it therefore enacted, that in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate : provided always, that any railway company applying to the lords of the said committee for any such certificate, shall give fourteen days' notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land owners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required ; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given : provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

Carriages of greater weight than four tons may be used on railways.

XVI. And whereas by various acts relating to railways it is enacted, that no carriage or waggon shall carry or bear at any one time upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated ; be it therefore enacted, that every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons, shall be and the same is hereby repealed, and that, notwithstanding any thing in any act contained, it shall be lawful for any railway company to use and to permit to be used upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of Parliament already or hereafter to be passed in that behalf.

Punishment of persons

XVII. And whereas by the said recited act for regulating



railways, provision is made for the punishment of servants of employed  
 railway companies guilty of misconduct, and it is expedient to on railways  
 extend such provision ; be it enacted, that it shall be lawful for guilty of  
 any officer or agent of any railway company, or for any special misconduct.  
 constable duly appointed, and all such persons as they may call  
 to their assistance, to seize and detain any engine driver, waggon-  
 driver, guard, porter, servant, or other person employed by the  
 said or by any other railway company, or by any other com-  
 any or person, in conducting traffic upon the railway belong-  
 ing to the said company, or in repairing and maintaining the  
 works of the said railway, who shall be found drunk while so  
 employed upon the said railway, who shall commit any offence  
 against any of the bye laws, rules, or regulations of the said  
 company, or who shall wilfully, maliciously, or negligently do  
 or omit to do any act whereby the life or limb of any person  
 passing along or being upon such railway or the works thereof  
 respectively shall be or might be injured or endangered, or  
 whereby the passage of any engines, carriages, or trains shall  
 be or might be obstructed or impeded, and to convey such  
 engine-driver, guard, porter, servant, or other person so  
 offending, or any person counselling, aiding, or assisting  
 in such offence, with all convenient despatch, before some  
 justice of the peace for the place within which such offence  
 shall be committed, without any other warrant or autho-  
 rity than this act ; and every such person so offending, and  
 every person counselling, aiding, or assisting therein as aforesaid,  
 shall, when convicted upon the oath of one or more credible  
 witness or witnesses before such justice as aforesaid (who is  
 hereby authorized and required, upon complaint to him made  
 upon oath, without information in writing, to take cognizance  
 thereof and to act summarily in the premises), in the discretion  
 of such justice, be imprisoned, with or without hard labour, for  
 any term not exceeding two calendar months, or, in the like dis-  
 cretion of such justice, shall for every such offence forfeit to her  
 Majesty any sum not exceeding ten pounds, and in default of  
 payment thereof shall be imprisoned, with or without hard  
 labour as aforesaid, for such period not exceeding two calendar  
 months, as such justice shall appoint, such commitment to be  
 determined on payment of the amount of the penalty ; and  
 every such penalty shall be returned to the next ensuing court  
 of quarter sessions in the usual manner.

XVIII. And be it enacted, that in all cases in which by the Sheriffs to  
 present or the said recited act for regulating railways it is pro- have juris-  
 vided that offenders shall be taken before one or more justices diction in  
 of the peace for the place within which the offence was com- Scotland.  
 mitted, it shall be lawful, in case the offence is committed in  
 Scotland, to take such offenders before the sheriff of the county,  
 or other magistrate acting for the district within which such

offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

Communi-  
cations to  
and from  
the Board of  
Trade, and  
service of  
notices, &c.  
on railway  
company.

XIX. And be it enacted, that all notices, returns, and other documents required by this act or by the said recited act to be given or laid before the lords of the said committee shall be delivered at or sent by the post to the office of the lords of the said committee; and all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the lords of the said committee, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto; and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company.

Railway  
companies  
shall con-  
vey military  
and police  
forces at  
prices to  
be settled.

XX. And be it enacted, that whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessities and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions, as may from time to time be contracted for between the secretary-at-war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities.

Meaning of  
the words  
"railway"  
and "com-  
pany."

XXI. And be it enacted, that whenever the word "railway" is used in this or in the said recited act, it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word "company" is used in this or in the said recited act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors,

administrators, and assigns, unless in either of the above cases the subject or context be repugnant to such construction.

XXII. And be it enacted, that all penalties under this act, Application for the application of which no special provision is made, shall of penalties. be recovered in the name and for the use of her Majesty, in the manner provided by the said recited act for regulating railways.

XXIII. And be it enacted, that this act may be amended Act may be or repealed by any act to be passed in the present session of repealed Parliament. this session.

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7 & 8 VICT. CAP. 85.

*An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways.*

[9th August, 1844.]

WHEREAS it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that if at any time after the end of twenty-one years from and after the first day of January next after the passing of any act of the present or of any future session of Parliament for the construction of any new line of passenger railway, whether such new line be a trunk, branch, or junction line, and whether such new line be constructed by a new company incorporated for the purpose or by any existing company, the clear annual profits divisable upon the subscribed and paid up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid up capital stock, it shall be lawful for the lords commissioners of her Majesty's treasury, subject to the provisions hereinafter contained, upon giving to the said company three calendar months' notice in writing, of their intention so to do, to revise the scale of tolls, fares, and charges limited by the act or acts relating to the said railway, and to fix such new scale of tolls, fares, and charges, applicable to such dif-

If, after 21 years from the passing of the act for the construction of any future railway, the profits shall exceed 10l. per cent. the Treasury may revise the scale of tolls, and fix a new scale.

**Proviso.** ferent classes and kinds of passengers, goods, and other traffic on such railway, as in the judgment of the said lords commissioners, assuming the same quantities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred : Provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist as long as any such revised scale of tolls, fares, and charges, shall be in force, that the said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock : Provided also, that such revised scale shall not be again revised or such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

**Option of purchase of future railways.** II. And be it enacted, that whatever may be the rate of divisible profits on any such railway it shall be lawful for the said lords commissioners, if they shall think fit, subject to the provisions hereinafter contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway with all its hereditaments, stock and appurtenances, in the name and on behalf of her Majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years' purchase of the said annual divisible profits, estimated on the average of the three then next preceding years : provided that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years' purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase money shall be paid to the said company : provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares, and charges shall be in force.

**Proviso.**

**Existing railways not to be subjected to the options.** III. Provided always, and be it enacted, that the option of revision or purchase shall not be applied to any railway made or authorized to be made by any act previous to the present session ; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act ; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietor thereof shall require that the same be so included.

7. And whereas it is expedient that the policy of revision or purchase should in no manner be prejudged by the provisions of the act, but should remain for the future consideration of the legislature, upon grounds of general and national policy : and whereas it is not the intention of this act that under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies ; be it enacted, that no such notice as hereinbefore mentioned, whether of revision or purchase shall be given until provision shall have been made by Parliament, by an act or acts to be passed in that behalf, for authorizing the guarantee or the levy of the purchase money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them, shall be exercised ; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either house of Parliament unless it be recited in the preamble to such bill, that three months' notice of the intention to apply to Parliament for such power has been given by the said lords commissioners to the company or companies to be affected thereby.

Reservation to Parliament of the consideration of future policy in regard to the said options.

8. And be it enacted, that, from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received or paid on account of any railway within the provisions hereinbefore contained, distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk, line, or other railways,) by the directors of the company to whom such railway belongs, or by whom the same may be worked ; and every such railway company shall once in every half-year during the said period of three years cause a half-yearly account in abstract to be prepared, showing the total receipt and expenditure on account of the said railway for the half-year ending the thirtieth day of June and the thirty-first day of December respectively, or on such other convenient days as shall in each case be directed by the said lords commissioners, under distinct heads of receipt and expenditure with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said lords commissioners on or before the last days of August and February respectively, or such other days as shall in each case be directed by the said lords commissioners, in each year ; and it shall be lawful for the said lords commissioners, if and when they shall think fit, to appoint any proper person or persons to inspect the accounts and books of

Accounts to be kept, and to be open to inspection.

the said company during the said period of three years; and it shall be lawful for any person so authorized, at all reasonable times, upon producing his authority, to examine the books, accounts, vouchers, and other documents of the company at the principal office or place of business of the company, and to take copies or extracts therefrom.

**Companies to provide one cheap train each way daily.**

VI. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather; be it enacted, that on and after the several days hereinafter specified, all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained, or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts shall by means of one train at the least, to travel along their railway from one end to the other of each trunk, branch, or junction line belonging to or leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way, on every week day, except Christmas day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of Parliament, and with the immunities applicable by law to carriers of passengers by railways; and also under the following conditions; (that is to say.)

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the lords of the committee of privy council for trade and plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the lords of the said committee:

The fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled: Each passenger by such train shall be allowed to take with him half a hundred weight of luggage, not being mer-

chandise or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passenger's luggage by other trains:

Children under three years of age accompanying passengers by such train shall be taken without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger:

And with respect to all railways subject to these obligations, which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the act shall be passed by reason of which the company will become subject thereunto, which shall first happen.

VII. And be it enacted, that if any railway company shall refuse or wilfully neglect to comply with the provisions of this act, as to the said cheap trains within a reasonable time, or shall attempt to evade the operation of such order, such company shall forfeit to her Majesty a sum not exceeding twenty pounds for every day during which such refusal, neglect, or evasion shall continue. Penalty for non-compliance.

VIII. Provided always, and be it enacted, that except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates hereinbefore in such case provided, the lords of the said committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions hereinbefore required in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats, or other particulars, as to the lords of the said committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the lords of the said committee shall not be liable to any penalty for not observing the conditions which shall have been so dispensed with by the lords of the said committee, in regard to the said cheap trains and the passengers conveyed thereby. Board of Trade to have a discretionary power of allowing alternative arrangements.

IX. And be it enacted, that no tax shall be levied upon the receipts of any railway company from the conveyance of passen- When no tax to be levied.

gers at fares not exceeding one penny for each mile by any such cheap train as aforesaid.

Where companies run trains on the Sunday cheap trains to be likewise provided.

X. And be it enacted, that whenever any railway company subject to the hereinbefore-mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its act or acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third class passengers at the terminal and other stations at which such Sunday train may ordinarily stop; and the fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled.

Railway companies to afford additional facilities for the transmission of the mails.  
1 & 2 Vict.  
c. 98.

XI. And whereas by an act passed in the second year of the reign of her Majesty, intituled, "An Act to provide for the Conveyance of the Mails by Railways," provision was made for the transmission of the mails by railway, and it is expedient that such provisions should be extended: be it enacted, That it shall be lawful for the postmaster general to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the inspector general of railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour, including stoppages; and it shall be also lawful for the postmaster general to send any mail guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains other than a mail train, upon the same conditions as any other passenger; provided that in such last mentioned case nothing herein, or in the last recited act contained shall be construed to authorize the postmaster general to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company, in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

Certain companies to convey military and police forces at certain charges.  
5 & 6 Vict.  
c. 55.

XII. And whereas by an act passed in the sixth year of the reign of her Majesty, intituled, "An Act for the better regulation of Railways, and for the Conveyance of Troops," it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby re-



quired to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices, or upon such conditions as may from time to time be contracted for between the secretary at war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities; and whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway, or any railway obtaining new powers from Parliament; be it enacted, that all railway companies which have been, or shall be incorporated by any act of the present or any future session, or which by any act of the present or any future session shall have obtained, or shall obtain any extension or amendment of the powers conferred by their previous acts, or any of them, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier, entitled by act of Parliament, or by competent authority, to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundred weight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow, shall be entitled to take with him or her half a hundred weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessaries and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the secretary at war and the company,) shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.

Companies to allow lines of electrical telegraph to be established.

XIII. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation; be it enacted, That every railway company, on being required so to do by the lords of the said committee, shall be bound to allow any person or persons authorized by the lords of the said committee, with servants and workmen, at all reasonable times to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway, a line of electrical telegraph for her Majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on her Majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the lords of the said committee, or in case of disagreement as may be settled by arbitration: Provided always, that, subject to a prior right of use thereof for the purposes of her Majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Electrical telegraph established by private parties to be open to the public.

XIV. And be it enacted, that where a line of electrical telegraph shall have been established upon any railway, by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the prior right of use thereof for the service of her Majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

Appointment of inspectors by Board of Trade.  
3 & 4 Vict.  
c. 97.

XV. And whereas by an act passed in the fourth year of the reign of her Majesty, intituled, "An Act to regulate Railways," power is given to the lords of the said committee to appoint any proper person or persons to inspect any railway, and the stations, works, and buildings, and the engines and carriages belonging thereto; and in order to carry the provisions of this act into execution it is expedient that the said power be extended; be it enacted, that the said power given to the lords of the said committee of appointing proper persons to inspect railways shall extend to authorize the appointment by the lords of the said committee of any proper person or persons, for such purposes of inspection as are by the said act authorized, and also for the purpose of enabling the lords of the said committee

to carry the provisions of this and of the said act and of any general act relating to railways into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed: Provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

XVI. And whereas by the said act of the fourth year of the reign of her Majesty, intituled, "An Act for regulating Railways," it is among other things enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway companies, or the provisions of that act, have not been complied with on the part of any of the said companies or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her Majesty's attorney general for England or Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the said attorney general or lord advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding (as the case may require), proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; provided always, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same; and whereas it is expedient that more effectual provision should be made, not only for enforcing a compliance on the part of railway companies with the provisions of their acts, but also for restraining railway companies from performing acts unauthorized by such provisions; be it enacted, that so much of the said act as is hereinbefore recited shall be repealed. Repealing provision of 3 & 4 Vict. c. 97.

XVII. And be it enacted, That whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway company, or the provisions of this act or of any general act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provisions of the act or acts of Parliament relating to such railway, or in If railway companies contravene or exceed the provisions of their acts, or of any general

act the Board of Trade to certify the same to the attorney general, &c. who shall proceed against them.

excess of the powers given and objects defined by the said act or acts, and it shall also appear to the lords of the said committee that it would be for the public advantage that the company should be restrained from so acting, the lords of the said committee shall certify the same to her Majesty's attorney general for England or Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the said attorney general or lord advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the act or acts relating thereto or of this act, or of any general act relating to railways, proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; and in case the default of the railway company shall consist in the commission of some act or acts unauthorized by law, then the said attorney general or lord advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity or other judge to whom the application is made shall be authorized and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorized by law) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

Notice to be given to the company.

Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

Issue of loan notes and other illegal securities by railway companies prohibited.

XVIII. Provided always, and be it enacted, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to give such certificate; and that no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against any of the several acts relating to railways or this act, or any general act relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

XIX. And whereas many railway companies have borrowed money in a manner unauthorized by their acts of incorporation or other acts of Parliament, relating to the said companies upon the security of loan notes or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the

e: And whereas such loan notes or other securities otherwise than under the provision of some act or acts of it have no legal validity, and it is expedient that the such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith between the borrower and lender, and for the most part lawful purposes of the undertaking, and in ignorance of their invalidity, it is expedient to confirm such as have already issued; be it enacted, that from and after the passing of this act any railway company issuing any loan note or negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some act of Parliament authorizing the said railway company to borrow money and to issue such security, shall for every such offence to her Majesty a sum equal to the sum for which the loan note or other instrument purports to be such security: always, that any company may renew any such loan note or other instrument issued by them prior to the passing of this act for any period or periods not exceeding five years from the date of this act.

Loan notes already issued may be renewed.

And be it enacted, that where any railway company, on or after the twelfth day of July, one thousand eight hundred and eighty-five, shall have issued or contracted to issue any such loan note or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may become due, subject as hereinbefore provided; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

Loan notes already issued to be paid when due.

And be it enacted, that a register of all such loan notes or other instruments shall be kept by the secretary; and such register shall be open, without fee or reward, at all reasonable times for the inspection of any shareholder or auditor of the company, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Register of loan notes.

. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances inadequate for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to amend the said remedies when the said rent-charges may have been or may be apportioned; be it enacted, that in all cases in which any tithe rent-charge or part of any rent-charge, has been or shall be duly apportioned under the provisions of the Tithe Act, 1836, the commutation of tithes in England and Wales, upon

Remedy for recovery of tithe rent charged on railway land.

lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear or unpaid for the space of twenty-one days next after any half-yearly day, fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years : provided always that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

Communi-  
cations to  
and from  
Board of  
Trade, ser-  
vice of no-  
tices, &c.

XXIII. And be it enacted, that all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the lords of the said committee, shall for the purposes of this act be deemed to have been made by the lords of the said committee ; and all certificates of anything done by the lords of the said committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same, or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the said company ; and all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee, shall be delivered at or sent by post addressed to the office of the lords of the said committee.

Penalties.

XXIV. And be it enacted, that all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of her Majesty, and may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland.

Interpreta-  
tion of act.

XXV. And be it enacted, that where the word " railway " is used in this act, it shall be construed to extend to railways constructed under the powers of any act of Parliament ; and when the words " passenger railway " are used in this act, they shall be construed to extend to railways, constructed under the powers

of Parliament upon which one-third or more of the al revenue is derived from the conveyance of passen-  
 am or other mechanical power; and whenever the  
 npany'' is used in this act it shall be construed to  
 nclude the proprietors for the time being of any such  
 and that where a different sense is not expressly de-  
 does not appear by the context, every word importing  
 r number or the masculine gender shall be taken to  
 ales as well as males, and several persons and things  
 ne person or thing.

And be it enacted, that this act may be amended or Act may be  
 any act to be passed in this session of Parliament. amended  
 this session.



## 8 &amp; 9 VICT. CAP. 96.

*restrict the Powers of selling or leasing Railways  
 in certain Acts of Parliament relating to such*  
 [4th August, 1845.]

provisions have been introduced in various acts of  
 during the present session of Parliament, relating  
 , giving to railway companies general powers of  
 accepting a lease, sale, or transfer of their own or  
 of railway; and it is expedient that such powers  
 estrained: Be it therefore enacted by the Queen's  
 int Majesty, by and with the advice and consent of  
 irtual and temporal, and commons, in this present  
 assembled, and by the authority of the same, that No railway  
 be lawful for the company of proprietors of any company to  
 virtue of any powers contained in any act passed in grant or  
 session, to make or grant, or for any other railway accept a  
 party, by virtue of any such powers, to accept, a lease or  
 or other transfer of any railway, unless under the transfer of  
 a distinct provision in some act of Parliament to any railway  
 ecifying by name the railway to be so leased, sold, unless under  
 d, and the company or party by whom such lease, a distinct  
 rfer may be respectively made, granted, or ac- provision of  
 an act  
 specifying  
 the parties.

## 9 &amp; 10 VICT. CAP. 28.

*An Act to facilitate the Dissolution of certain Railways.*

[3d July,

Persons  
who shall  
have en-  
tered into a  
contract for  
the forma-  
tion of a  
company for  
making a  
railway,  
&c. may dis-  
solve the  
same pur-  
suant to  
this act.

WHEREAS it is expedient to facilitate the dissolution of railway companies as hereafter mentioned, and to afford for the winding up the concerns of such companies : May fore please your Majesty that it may be enacted ; and be it by the Queen's most excellent Majesty, by and with the and consent of the Lords spiritual and temporal, and in this present Parliament assembled, and by the authority of the same, that when any persons or companies, before the passing of this act, shall have entered into any contract, called a Subscription Contract, or any other agreement or agreements, in writing or otherwise, for the formation of a company or partnership for making any railway which is to be carried into execution without obtaining the authority of Parliament, and in respect of which an act shall not have been passed before the passing of this act have been obtained, it shall be lawful for such persons or companies to dissolve the said company or partnership, contract or agreement, in manner hereinafter mentioned, and that whether or not such contract or agreement shall contain any powers or provisions for dissolution of such company or partnership intended to be thereby formed, notwithstanding nevertheless, that nothing herein contained shall prevent any such persons or companies from exercising any such power or provision for dissolution in their contract or agreement contained, if they shall see fit, at any time before availing themselves of the powers in this act contained : Provided always that the provisions of this act shall be taken to apply to any contract or partnership for the making any railway, notwithstanding that the agreement or partnership may relate to any other objects in connexion therewith ; and (unless a separate and separate subscription shall exist as regards the different objects) then, on a dissolution under the provisions of this act the dissolution shall extend to the whole objects of the company or partnership.

Committee,  
&c. may call  
meetings of  
sharehold-  
ers to con-  
sider disso-  
lution.

II. And be it enacted, that it shall be lawful for the committee, provisional directors, or other persons by such agreement as aforesaid intrusted with the management of the carrying into effect of the undertaking, and who are hereinafter called " the committee," to call a meeting of the shareholders for the purpose of determining whether the partnership company so as aforesaid intended to be formed (and which is hereinafter called " the company ") shall be dissolved ; and that at such meeting shall determine, as after mentioned, that the



shall be dissolved, then as from the date of the resolution to at such meeting the company shall be taken to be dissolved, and the committee shall not have power to proceed any further with the undertaking.

1. And be it enacted, that it shall be lawful for any five Shareholders, as after defined, by writing under their hands, to require the committee to call a meeting for the purpose aforesaid, and that if the committee shall refuse or neglect, for six months after any such requisition shall have been left at the registered place of business of the company, as regards England and Wales, and as regards Scotland, at the usual place of business, and shall have been served personally on any member of the committee, to call such meeting by notice as after mentioned, or on any reason whatever such meeting shall not be convened or held in pursuance of the directions herein contained, it shall be lawful for any five shareholders to call such meeting; and if any such requisition shall have been left or served as aforesaid, it shall not be lawful for the committee or any of them to make any payments out of the monies of such company, except in discharge of bona fide debts or liabilities, or in performance of contracts or engagements, previously entered into, or a payment of the expenses of calling and holding such meeting or any adjourned meeting, nor to enter into any contracts or engagements on behalf of the company or affecting the property thereof, nor to issue any shares or scrip of or representing the capital stock of such company, until the meeting called as aforesaid shall have determined the question of dissolution.

2. And be it enacted, that the meeting shall be held to have been duly called, although the votes of the parties calling the same, or any of such votes, shall be disallowed at the meeting by the scrutineers to be appointed as herein-after mentioned.

And be it enacted, that the calling of any such meeting shall be by notice, signed either on behalf of the committee by any one member of the same, or in case the meeting shall be called by the shareholders, then by the shareholders calling the same, such notice to be advertised in the London Gazette eight days and not more than fifteen days before the time to be fixed for holding such meeting, and also, within the before-mentioned limits as to time, in three London daily newspapers; that in the case of railways to be made in Ireland, such notice shall also be advertised, within the before-mentioned limits as to time, in the Dublin Gazette; and in two newspapers in common circulation in the city of Dublin; and as to railways to be made in Scotland, the said notice shall also be

Shareholders may require committee to call meeting, and in default may call it themselves.

Meeting to be held duly called, although certain votes may be disallowed.

Notice of meeting to be by advertisement.

advertised, within the before-mentioned limits as to time, in the Edinburgh Gazette, and in two newspapers in common circulation in the city of Edinburgh.

Notices to specify the day, hour, &c. of meeting.

VI. And be it enacted, that every notice of meeting shall specify the day, hour, place, and purpose of meeting; and the parties entitled to be present at such meeting shall be the persons producing the shares, scrip, or receipts herein-after defined, or the proxies after-mentioned.

Chairman to be elected by a majority of committee if present.

VII. And be it enacted, that every meeting so called shall elect a chairman within one hour of the time appointed for holding such meeting, and that the person to be in the chair at every such meeting shall be some member of the committee, to be elected by a majority of the members of the committee present at the meeting, and in case the votes of the members of the committee present shall be equally divided, or if from any cause there shall be no member of the committee so elected, then some shareholder entitled to vote shall be elected by the meeting; and every person present, either in respect of shares or of a proxy, shall have one vote only for the election of the chairman and scrutineers; and every chairman shall have a casting vote, in addition to any other vote which he may be entitled to; and if any such chairman shall refuse to give his casting vote on the question of dissolution or bankruptcy as after mentioned, the question shall be considered as carried in the affirmative for dissolution or bankruptcy.

Chairman to have a casting vote

Chairman bound to put questions proposed, and no other business to be transacted.

VIII. And be it enacted, that the chairman at every such meeting shall be bound to put to the meeting any question proposed for the dissolution of the company, or as to the bankruptcy thereof, and also as to the election of scrutineers, and that no business shall be transacted at any such meeting other than the consideration of any such question so proposed, and the election of a chairman and scrutineers.

Three scrutineers to be elected.

IX. And be it enacted, that immediately after the election of a chairman the meeting shall proceed to elect as scrutineers three shareholders in the company, whose business it shall be to verify as after mentioned and take the votes of the shareholders entitled to vote, and cast up and declare the same; and the decision in writing of them, or of any two of them, shall be final in all respects.

Case of the chairman not being entitled to vote.

X. And be it enacted, that in case it shall be discovered by or shown to the scrutineers that the chairman at any meeting is not entitled to vote as a shareholder, it shall be lawful for the meeting either to elect a new chairman or to maintain such existing chairman, but such chairman so maintained in office shall not thereby acquire the right of voting as a shareholder,

Or of giving a casting vote; and in case the votes shall be equally divided, the resolutions shall be considered as carried in the affirmative for the dissolution and as to the bankruptcy of the company: Provided always, that all votes, acts, and deeds by any chairman not entitled to vote, or by the meeting presided over by him, given or done before the discovery of his not being so entitled, or given afterwards if he be so maintained, shall be valid and effectual; and, as regards the election of chairman and scrutineers by the votes of the parties present, and producing scrip or proxies, no objection after the election shall be made on its being shown that they were not entitled to be present.

XI. And be it enacted, that at any such meeting as aforesaid, in the event of the prescribed quorum after mentioned not being present and voting at such meeting, then the chairman shall cause the votes of the persons constituting the said meeting to be taken and recorded, and shall then adjourn the same to be held at the same place, and at a day to be declared by the chairman, such day not being less than three days and not more than one week from the original day of meeting, such day and the time of meeting in the meantime, as regards any meeting held in any part of England, being advertised twice in each of three London daily newspapers, and in the case of a meeting held at Edinburgh twice in two Edinburgh newspapers, and in the case of a meeting held in Dublin twice in two Dublin newspapers; and at such adjourned meeting the votes of such persons constituting the same as had not voted at the original meeting shall be taken and recorded, and the total amount of votes given at the original and adjourned meeting shall be received as if given at one and the same meeting.

In the event of a quorum not being present at such meetings, the same to be adjourned, and votes of persons present at original and adjourned meetings to be received as if given at one and the same meeting.

XII. And be it enacted, that the only persons entitled to be present and vote at any such meeting as shareholders by themselves or proxies, shall be those persons who shall for the time being be in possession of and produce certificates or receipts declaring parties entitled to shares in any company, or acknowledging the receipt of a deposit in such company, usually termed "Scrip" or "Receipts" for deposits on shares, and that notwithstanding the party in possession may not be the party to whom the same was originally granted, or that the same may not have been legally assigned to the party in possession, or notwithstanding the same may be possessed by the holder as a mere mortgagee, or in any other manner, or the same may be subject to any charge or lien, and which parties are by this act called "Shareholders;" provided that nothing herein contained shall authorise more than one vote, either for dissolution or bankruptcy, to be given in respect of the same share, notwith-

As to the right of parties entitled to vote at meetings of the shareholders.

standing any transfer or delivery of such share after a vote shall have been given in respect thereof.

Scale of  
voting.

XIII. And be it enacted, that every shareholder shall, in voting on the questions of dissolution and bankruptcy, be entitled to one vote, by himself or proxy, in respect of every share held by him, or in respect of which scrip or receipts may have been issued or deposits paid, and that all shareholders producing such shares, scrip, or receipts, shall be entitled to attend meetings and to appoint proxies according to the form contained in the schedule hereunto annexed, or in some form to the like effect : Provided always, and be it enacted, that the fact of any such party attending any such meeting shall not in anywise increase or alter, either in law or equity, his rights or liabilities.

Proxies  
shall be  
signed be-  
fore a  
master in  
Chancery in  
England,  
or sheriff,  
&c. in Scot-  
land.

XIV. And be it enacted, that the appointment of any such proxy shall be signed by the party appointing the same before a master or master extraordinary of the Court of Chancery in England or Ireland, or a justice of the peace in England or Ireland, or before a sheriff or sheriff substitute or justice of the peace in Scotland, or, where such shares, scrip, or certificate shall be in possession of any parties beyond seas, the said proxy shall be signed as aforesaid before any of her Majesty's consuls or vice consuls or a notary public ; and that, on signing the same, the share, scrip, or receipt, in respect of which the proxy is intended to be appointed, shall be produced to the master, justice, sheriff, sheriff substitute, consul, vice consul, or notary public ; and the number of the shares, or the number of shares referred to in such scrip or receipt, and the name of the company, shall be ascertained and verified, with the number and name of the company stated in the appointment of proxy, before such master, sheriff, sheriff substitute, justice, consul, vice consul, or notary public.

Number of  
persons, &c.  
necessary to  
constitute a  
meeting.  
Majority  
must consist  
of at least  
three fifths  
of the votes  
of persons  
present.

XV. And be it enacted, that to constitute a meeting under the provisions of this act for the purpose of deciding on a dissolution or bankruptcy, persons representing at least one third part of the shares in the undertaking actually issued or given, either as shares, scrip, or receipts, must be present and vote ; and that for the purpose of effecting a dissolution, and as to bankruptcy, there must be either a majority of the votes of the whole scrip of the company issued as aforesaid, or at least three-fifths of the votes of persons present and voting, either as shareholders or proxies, in favour of the motion for dissolution, and for the bankruptcy, if so resolved on.

Minutes of  
proceedings  
to be ad-  
vertised.

XVI. And be it enacted, that the chairman at every such meeting shall sign a minute of the proceedings, and that every minute so signed shall be advertised within the shortest possible

~~Minutes~~ in the same papers as those in which notice of the original meeting is herein-before required to be given; and a copy of ~~the~~ London Gazette containing the advertisement of such minutes shall be evidence of the meeting having been duly called ~~and~~ held, and of the resolutions recorded having been duly ~~passed~~ by the majorities therein mentioned; and such minutes shall be countersigned by at least two of the three scrutineers ~~fore~~saids; and that any parties signing minutes false or incomplete in any material particular, or any person who shall insert ~~or~~ cause to be inserted in the London Gazette any advertisement under the present clause, knowing the same to be false in ~~any~~ material particular, shall be guilty of a misdemeanor; and ~~the~~ minute directed to be advertised shall also be registered with the registrar of Joint Stock Companies, without any fee being chargeable for such registration.

London Gazette to be evidence.

Penalty on signing false minutes, &c.

XVII. And be it enacted, that as regards all projected railways as aforesaid any portion of the intended line of which is situate in England or Wales, the meeting aforesaid may be held, as shall be specified in the notice calling the same either in London or Westminster, or at the registered place of business of the company; or as regards any railways any portion of the intended line of which is situate in the counties of Lancaster or Chester, such meeting may be held at Manchester or Liverpool, notwithstanding that the registered place of business may not be at either of such places; or as regards any railways any portion of the intended line of which is situate in the county of York, such meetings may be held at York or Leeds, notwithstanding that the registered place of business may not be at either of such places; that as regards railways situate in Ireland, the meetings may be held either in London or Dublin, or at the registered places of business, as shall be specified in the notice; and that as regards railways situate in Scotland, the meetings may be held either in London or Edinburgh, or at the usual places of business, as shall be specified in the notice.

Places of meetings shall be held as specified in notice.

XVIII. And be it enacted, that no parties shall be entitled to vote except in respect of scrip, receipts, or shares actually issued or given before the thirty-first day of March one thousand eight hundred and forty-six, and that the shares, scrip, or receipts actually issued, or given shall for the purposes of this act be taken to constitute the whole number of shares in the undertaking, although the contract may have provided that the undertaking shall consist of a greater number; and that for the purpose of ascertaining the number of shares, scrip, or receipts actually issued or given, the committee of every projected railway company to which the powers given by this act apply (except in regard to railways to be made in Scotland) shall, within twelve days after the passing of this act, be bound to

No votes allowed except for scrip, &c. actually issued or given before 31st March 1846.

Mode of ascertaining the issues.

7 & 8 Vict.  
c. 110.

send in unto the registrar of Joint Stock Companies a return in writing under the hand of any member of such committee specifying the number of shares, scrip, or receipts actually issued or given as aforesaid, the amount of each share, and of the deposit paid or to be paid thereon ; and that in case such return shall not be so sent in within the aforesaid period, every member of the committee shall forfeit a sum not exceeding twenty pounds, to be recovered in like manner as any penalty under the act intituled " An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," is recoverable.

Registrars of Joint Stock Companies to require return of issues, but omission of registrar to send notice not to exempt committee from penalties.

XIX. And be it enacted, that the registrar of Joint Stock Companies shall, within six days from the passing of this act, send to the registered place of business of every such company a notice in writing under his hand requiring such return to be made ; but the omission to send any such notice by the registrar shall not exempt the committee of any such company from the penalties aforesaid ; and every person shall be at liberty to inspect any returns made to the registrar under this act on payment of a fee of two shillings and sixpence ; and the certificate of the said registrar, under his seal of office, as to the total amount of the shares, scrip, or receipts, shall be evidence as to the amount specified in such return, and for such certificate a fee of two shillings and sixpence shall be paid ; and no proceedings at any meeting shall be invalidated by reason of any defect or error in such return, but any party making such return knowing it to be false shall be guilty of a misdemeanor.

Committees of projected railways in Scotland to lodge a return with the sheriff clerk of Edinburgh within twelve days from passing of this act. Penalty for not lodging return.

XX. And be it enacted, that in regard to projected companies for railways to be made in Scotland the committee of every such company to which the powers given by this act apply shall, within twelve days after the passing of this act, be bound to lodge with the sheriff clerk of the shire of Edinburgh a return in writing under the hand of a quorum of such committee, or of every member thereof, specifying the number of shares, scrip, or receipts actually issued or given as aforesaid, the amount of each share, and the deposit paid or to be paid thereon ; and that in case such return shall not be lodged within the aforesaid period every member of such committee shall forfeit a sum not exceeding twenty pounds, to be recovered by summary petition to the court of session at the instance of the said sheriff clerk.

The sheriff clerk to give notice by advertisement for returns of issued

XXI. And be it enacted, that the said sheriff clerk shall, within six days after the passing of this act, cause to be published in the Edinburgh Gazette, and in two newspapers in common circulation in the city of Edinburgh, a notice by him requiring such returns to be made ; and every person shall be at liberty to inspect any returns made to the sheriff clerk ; and

ceding at any meeting shall be invalidated by reason of scrip, &c. to  
 r error in any such return, but any party making such be made.  
 knowing it to be false, shall be held to be guilty of  
 d and fraud, and shall be liable to prosecution and  
 ent accordingly; and the necessary expences of the  
 lerk in regard to such returns and notices shall be paid  
 several committees making or bound to make returns,  
 ll be recovered in such amount from each of such com-  
 as the sheriff of the shire of Edinburgh shall by a  
 under his hand fix and determine.

I. Provided always, and be it enacted, that if by any In default  
 whatever such return of the number of shares, scrip, or of return  
 actually issued shall not be made within one calendar meeting  
 from the passing of this act, then a meeting may be may be  
 nd held under the provisions of this act, and may resolve called,  
 olution or bankruptcy as by this act is provided, if per- which must  
 representing shares as before defined equal to at least one represent  
 urt of the whole capital of the undertaking are present one third  
 e; and any such meeting shall have the same powers as of capital of  
 conferred on a meeting representing one third of the the com-  
 actually issued as aforesaid. pany.

II. And be it enacted, that, in addition to the question Meeting to  
 lution, it shall be imperative on the meeting to decide decide if  
 : such dissolution shall or shall not be taken to be an dissolution  
 ankruptcy for the purpose of having the affairs of the taken to be  
 y wound up under the provisions of the act after men- an act of  
 but this provision shall not extend to the case of rail- bankruptcy.  
 be made in Scotland. Scotland  
 exempted.

V. And be it enacted, that in case the meeting shall If meeting  
 that the affairs of the company shall not be so wound decide that  
 in the case of a railway to be made in Scotland if the affairs shall  
 y shall resolve in favour of dissolution, then (subject to not be so  
 ver herein-after given to the committee and to creditors wound up,  
 company to petition for a fiat) the affairs of the said &c., then  
 y shall be wound up according to the rules applicable they shall  
 dissolution of partnership undertakings, and as if the be wound  
 aking had been dissolved by mutual consent. up like ordi-  
 nary part-  
 nerships.

V. Provided always, and be it enacted, that the resolu- Dissolution  
 dissolve the company, or the actual dissolution thereof, not to affect  
 ot alter or affect the rights of creditors or other persons rights of  
 ing shareholders in the company, nor any engagements creditors.  
 ever which the committee may have entered into, and  
 ot affect any suits pending before the passing of this act.

VI. And be it enacted, that where any meeting called to If proposal  
 of dissolu-

tion re-  
jected, no  
new meet-  
ing to be  
called for  
six months  
to consider  
the question  
Any three  
of the com-  
mittee, or  
any creditor  
or creditors,  
may peti-  
tion for a  
fiat in bank-  
ruptcy.

On issuing  
of fiats,  
companies  
to be sub-  
ject to the  
provisions  
of the acts  
for winding  
up the  
affairs of  
Joint Stock  
Companies.  
7 & 8 Vict.  
c. 111.  
8 & 9 Vict.  
c. 98.

Sequestra-  
tion of  
estates of  
dissolved  
Scotch rail-  
way com-  
panies may  
be awarded.

consider the question of dissolution shall have determined the question of the dissolution of the company in the negative, no new meeting shall be called to consider the question of dissolution, or any matter relating thereto, until the lapse of six months from the day in which the question was last resolved in the negative.

XXVII. And be it enacted, that it shall be lawful for any three of those who were of the committee of any company so dissolved, at any time after the dissolution thereof shall have been resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat in bankruptcy in England and Ireland, or a sequestration in Scotland, within three months after the dissolution thereof shall have been resolved, to petition that a fiat in bankruptcy may issue against such company if in England or Ireland, or that the estates of the company may be sequestrated if in Scotland.

XXVIII. And be it enacted, that upon the production of a copy of the London Gazette containing the resolution of any such meeting as aforesaid, whereby it shall be resolved that the dissolution of the company shall be an act of bankruptcy, or upon the petition of any three of the committee as aforesaid, or of any creditor under the last preceding clause, a fiat in bankruptcy shall issue against such company by the registered name or style of such company; and the company shall thereupon be deemed to be within the provisions of an act passed in the seventh and eighth years of the reign of her present Majesty, intituled "An Act for facilitating the winding up of Joint Stock Companies unable to meet their pecuniary engagements;" and of another act passed in the eighth and ninth years of the reign of her present Majesty, intituled "An Act to facilitate the winding up of Joint Stock Companies in Ireland unable to meet their pecuniary engagements," in all respects as if a fiat in bankruptcy had issued against it under the said act before its dissolution; but this last provision not to extend to Scotland.

XXIX. And be it enacted, that if the company be a company for making a railway or railways in Scotland sequestration of the estates of such company shall be awarded on petition for sequestration in common form presented in name of any three of the committee, or of any creditor or creditors of such company to such amount and on such evidence of debt or debts of such creditor or creditors as is now by law requisite for obtaining sequestration of the estates of any company liable to sequestration, there being always produced along with the petition for sequestration a copy of the London or Edinburgh Gazette containing the resolution whereby the dissolution of the company shall have been resolved upon; and such sequestration,



being so awarded, shall be followed out, in regard to the election of an interim factor and trustee and commissioners, and in regard to the proof and ranking of debts, the recovery and distribution of the estate, and all other matters necessary thereto, in the same manner and by the same course of procedure, as nearly as may be, as is by law provided in cases of sequestration of the estates of trading companies in Scotland : Provided always, that such sequestration shall not extend to or affect the estates of the individual partners of the company, nor preclude the rights or remedies otherwise competent by law to the creditors of such company against the individual partners thereof, or the estates of such individual partners.

XXX. And be it enacted, that when any company for making any railway, actually incorporated before the passing of this act, shall have agreed to form any new or other railway or an extension thereof, and in respect of which a new or further capital shall have been agreed to be raised or contributed, and shares as herein-before defined shall have been issued or otherwise appropriated, and deposits paid thereon, then such company or partnership (as regards the new undertaking) shall in all respects be considered as a company or undertaking within the provisions of this act ; and meetings shall be held, and shareholders entitled to shares as aforesaid in the new undertaking shall in manner herein-before provided have power to dissolve such new undertaking, and to decide as to bankruptcy, in all respects as is provided with regard to the companies herein-before mentioned or defined. As to new railways by rated companies.

XXXI. And be it enacted, that where the dissolution of a company shall have been resolved under this act, if judgment shall have been recovered or shall afterwards be recovered in any action against any member of the committee for any debt due from such company or from such committee in respect of the undertaking, the member against whom such judgment shall have been recovered shall be entitled at law to a contribution from each of the other members of such committee towards the payment of the monies recovered by such judgment, and of all costs and expenses in relation thereto, of such a share of the whole amount of such monies, costs, and expenses as would have been borne by such respective member upon an equal contribution by all the members of such committee, and may recover the contributions to which he may be so entitled, or any of them, by action or actions of debt or on the case against all or any of such other members of such committee, but so that no such member shall be liable in any such action as aforesaid for more than the share to which he shall respectively be liable to contribute under this provision. As to new railways by rated companies.

After dissolution of company no action, &c. to be brought by any attorney, &c. until one month after bill of fees shall have been delivered. Courts may refer bills for taxation to taxing officers.

XXXII. And be it enacted, that after the dissolution of any company shall have been resolved under this act no action or suit shall be brought for the recovery of any fees, charges, or disbursements for any business done for such company by any attorney or solicitor, whether in his character of attorney or solicitor, or as agent or otherwise, until the expiration of one calendar month after a bill of such fees, charges, and disbursements, signed by the claimant, shall have been delivered to the committee or official assignee authorized to wind up the affairs of such company, or left at their or his place of business; and it shall be lawful for the Court of Queen's Bench, Common Pleas, or Exchequer, or any judge of either of such courts, and they are respectively hereby required, on the application of such committee or of such official assignee, to refer such bill to be taxed and settled by any taxing officer of the court in which such reference shall be made; and the court or judge making such reference shall restrain the claimant from commencing any action or suit touching his demand pending such reference, and such taxing officer may take such evidence in relation to such bill as he may think fit; and the cost of such reference shall be paid according to the event of such taxation (that is to say), if such bill when taxed be less by a sixth part than the bill delivered, then the claimant shall pay such costs, and if the bill when taxed shall not be less by a sixth part than the bill delivered, then the party on whose application the reference shall have been made shall pay such costs, to be considered and allowed nevertheless as part of the costs, charges, and expenses of executing the trusts and powers of this act; and every order to be made for such reference shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what upon such reference shall be found to be due to or from such claimant in respect of such bill, and of the costs of such reference, and after such reference as aforesaid no further or other sum than shall be so found due shall be recoverable in respect of such bill.

Interpretation of Act.

XXXIII. And be it enacted, that the following words and expressions shall have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or subject matter (*videlicet*);

The word "month" shall mean calendar month:

The word "person" shall include corporations.

Act may be amended, &c.

XXXIV. And be it enacted, that this act may be amended, altered, or repealed by any act to be passed in this session of Parliament.

## SCHEDULE to which this Act refers.

*Form of Proxy.*

## Railway Company.

Proxy to vote in respect of Shares.

I *A.B.* of Holder of Shares,  
 [or Scrip, or Receipts for Shares (as the Case may be)], num-  
 bered respectively [here insert the Numbers, unless the Shares,  
 Scrip, Receipts, or Letter do not show the denoting Numbers],  
 in the projected Railway Company, do hereby  
 appoint *C.D.* of to be my Proxy upon  
 any Matter relating to the Dissolution or Bankruptcy of the  
 said Company, to vote, dissent, and act as he shall think  
 proper.

Witness my hand, the Day of

Taken before me, having verified the Numbers and Name of  
 the Company with the Documents produced to me,

Signed

[And add whether,]

Master Extraordinary, Sheriff, Sheriff Substitute, Justice,  
 Consul, Vice Consul, or Notary Public.



## 9 &amp; 10 VICT. CAP. 105.

*An Act for constituting Commissioners of Railways.*

[28th August, 1846.]

WHEREAS by an act passed in the fourth year of the reign of  
 her Majesty, intituled *An Act for regulating Railways*; and by 3 & 4 Vict.  
 another act passed in the sixth year of the reign of her Majesty, c. 97.  
 intituled *An Act for the better Regulation of Railways, and* 5 & 6 Vict.  
*for the Conveyance of Troops*; and by another act passed in c. 55.  
 the eighth year of the reign of her Majesty, intituled *An Act* 7 & 8 Vict.  
*to attach certain Conditions to the Construction of future Rail-* c. 85.  
*ways authorized or to be authorized by any Act of the present*  
*or succeeding Sessions of Parliament, and for other Purposes*  
*relating to Railways*; and by two other acts passed in the last 8 & 9 Vict.  
 session of parliament, for consolidating in one act certain pro- cc. 20, 33.  
 visions usually inserted in acts authorizing the making of rail-  
 ways, respectively, and by sundry local acts of parliament,  
 certain powers with respect to railways are vested in the Lords

Her Majesty empowered to appoint commissioners of railways, one of whom to be president, and from time to time remove them.

of the committee of her Majesty's most honourable Privy Council for Trade and Foreign Plantations; but it is expedient that a separate department be constituted for these purposes, and for other purposes relating to railways: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for her Majesty, by warrant under the royal sign manual, to appoint any number, not more than five persons, to be commissioners of railways, and from time to time, at her pleasure, to remove all or any of the said commissioners, and to appoint others in their stead, and to appoint one of the said commissioners to be their president; and any two of the said commissioners shall be competent to act in the execution of the powers vested in them by this act; and upon any vacancy in the number of the said commissioners, it shall be lawful for the surviving or continuing commissioners, not being less than two, to act, and their acts shall be as valid as if no such vacancy had occurred; and every such appointment or new appointment, and also the day on which the said commissioners shall begin to act in execution of this act, shall be published in the London Gazette.

Power of Board of Trade transferred to commissioners.

II. And be it enacted, that from and after the day which shall be so specified in the London Gazette as the day on which the said commissioners shall begin to act in execution of this act, all the powers, rights, and authority now vested in or exercised by the Lords of the committee of her Majesty's Privy Council for Trade and Foreign Plantations by virtue of the recited acts, or by any other act of parliament, or otherwise howsoever, with respect to any railway or intended railway, shall be transferred to and vested in and exercised by the commissioners of railways, as fully as if they had been named in the said several acts of parliament instead of the Lords of the said committee; and all provisions of the said acts shall be deemed to apply to the said commissioners instead of the Lords of the said committee; and all proceedings now pending before the Lords of the said committee, or carried on under their authority, shall be continued and carried on by and before the said commissioners, who shall have and exercise the same powers, rights, and authority in respect of all such proceedings as if they had been originally commenced before the said commissioners.

An office to be provided under the direction of the Treasury.

III. And be it enacted, that an office shall be provided in London or Westminster, under the directions of the commissioners of her Majesty's treasury, for the use of the commissioners appointed under this act, at or to which all notices and other documents shall be given or sent which are now by law

required to be given or sent at or to the office of the Lords of the said committee.

IV. And be it enacted, that the commissioners of railways shall cause a seal to be made for the purposes of their commission, and all orders and other documents proceeding from the said commissioners, and purporting to be sealed or stamped with the seal of the said commissioners, and signed by two or more of the said commissioners, shall be received as evidence of the same respectively in all courts and before all justices and others, without any further proof thereof. Documents sealed by commissioners to be evidence.

V. And be it enacted, that the said commissioners may appoint and at their pleasure remove a secretary and so many other officers and servants as to them, subject to the approval of the commissioners of her Majesty's treasury, shall appear necessary for carrying on the business of the said commission. Commissioners to appoint a secretary, officers, &c. subject to approval of treasury.

VI. And be it enacted, that the president and two other commissioners, and the secretary, officers, and servants of the said commissioners, shall be paid by such salaries as shall be from time to time appointed by the commissioners of her Majesty's treasury, not exceeding the sum of two thousand pounds in the case of the president, and the sum of one thousand five hundred pounds in the case of either of the two other paid commissioners, and in the case of the secretary and other officers and servants of the said commission, such fit salaries as shall be from time to time appointed, with due reference to their several stations and the duties they will have to perform. Payment of salaries to commissioners, officers, and servants.

VII. And be it enacted, that the office of the said president shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for sitting or voting in Parliament. President not disqualified to sit in parliament.

VIII. And be it declared and enacted, that the office of any other of the said commissioners who shall not be entitled to receive a salary by reason of his appointment to such office, shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for so sitting or voting; and if any such unpaid commissioner shall be a member of the House of Commons at the time of his appointment, his acceptance of such appointment shall not avoid his election or vacate his seat in Parliament; and for the purpose of distinguishing which commissioners are qualified to sit in Parlia- Unpaid commissioners not disqualified to sit in Parliament.

ment under this act, the warrant appointing any such commissioner shall specify that he will not be entitled, by virtue of such appointment, to receive any salary or remuneration whatsoever.

Commissioners to exercise powers now vested in the Board of Trade.

IX. And whereas in some cases railway companies have exceeded the powers given to them under the acts constituting them, or have otherwise acted contrary to the provisions of the said acts, or of the general acts for regulating railways; be it enacted, that it shall be the duty of the said commissioners to prevent any such unlawful proceedings, by the exercise of any powers now vested in the lords of the said committee.

Commissioners to report to her Majesty and both Houses of Parliament upon any case specially referred to them.

X. And be it enacted, that it shall be the duty of the said commissioners to examine and report to her Majesty and both houses of Parliament upon any subject relating to any railway, or proposed railway, which shall be specially referred to them for their opinion by her Majesty, or by either house of Parliament; and in the case of any application to Parliament for any act for making or maintaining any railway, it shall be their duty, if so directed by her Majesty or by the authority of either house of Parliament, to inquire and report, on local inspection or otherwise,—

Firstly. Whether there are any lines or schemes competing with the proposed railway :

Secondly. Whether by such bill it is proposed to take powers for uniting with such railway, or proposed railway, any other railway or canal, or to purchase or lease any railway, canal, dock, road, or other public work, undertaking, or easement :

Thirdly. Whether by such bill it is proposed to constitute any branch railway, or any other work in connexion with the proposed railway :

Fourthly. Whether any plans, maps, and sections of any such proposed railway which, pursuant to any order of either house of Parliament, shall have been deposited in their office, are correct, and if not, in what particulars and how far they are incorrect, and whether or not, in the opinion of the commissioners, such errors as they shall find are material to the object for which such plans and sections are required.

Commissioners empowered to inspect and survey proposed railways.

XI. And be it enacted, that for the purposes aforesaid the said commissioners shall be empowered, by themselves, or by such inspectors as they shall appoint for that purpose, to inspect and survey any proposed line of railway, and for the purposes of any such survey they and their inspectors shall have all the powers which under an act passed in the fifth year of the

reign of her Majesty, intituled "*An Act to authorize and facilitate the Completion of a Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man*, any officers or persons appointed by or acting under the orders of the master general and Board of Ordnance have for the purpose of making and carrying on any survey authorized by the last-recited act; and all the provisions of the last-recited act in anywise relating to any such survey shall be deemed to apply, so far as they are applicable, to any survey which may be directed by the said commissioners under this act, provided that all allowances and payments made under this act of the same kind as those which by the last-recited act are to be paid out of the aids granted by Parliament to her Majesty on account of the Board of Ordnance, and also all other expences incurred by the commissioners in making such survey and inspection, shall be paid by the provisional committee or directors or other persons who shall be the promoters of the said intended railway; and in case of non-payment of the same in any case, the amount of such allowances, payments, and expences shall be deemed a specialty debt due to her Majesty from such committee men, directors, and other persons, and each of them severally, and shall be sued for and recovered accordingly.

XII. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament. Act may be amended, &c.

## FORMS.

*Form of Subscribers' Agreement.*

THIS INDENTURE, made the                      day of                      , one thousand eight hundred and forty                      , BETWEEN the several persons whose names are hereunto subscribed and seals affixed in the schedule hereto of the first part, and A. B., &c. (trustees named and appointed for the purpose of enforcing and giving effect to the covenants herein contained), of the second part, WITNESSETH, that each of them the said several parties hereto of the first part, DOETH hereby for himself and herself, his and her heirs, executors, administrators, acts, deeds, and defaults, respectively covenant, promise, and agree with and to the said                      their executors and administrators, in manner following (that is to say), that each of them the said several parties hereto of the first part hath subscribed, and doth hereby subscribe, the sum of money set opposite to his and her name in the said schedule hereto, for the purpose of making, establishing, and maintaining the railway and works after mentioned, to be called by the name of “                      ,” but with full power for the said managing committee to determine, and from time to time to alter and vary the sites, spots, or places at which the said railway and works respectively shall commence and terminate, and the intermediate courses, routes, or lines thereof respectively, and the extent and situation of the approaches thereto, and the stations, branch railways or extensions, buildings, works, and conveniences to be connected therewith. AND THIS INDENTURE FURTHER WITNESSETH, that the said several persons parties hereto, do hereby recognise and acknowledge, and nominate and appoint the following persons, or such of them as shall from time to time accept and act, and the survivor of them, and such other person or persons as shall be hereafter added to their number, in manner hereinafter mentioned, as the managing committee, for the purposes and with the powers hereinafter specially expressed and conferred on them, viz., A. B., C. D., &c. AND THIS INDENTURE FURTHER WITNESSETH, that each of them the said several persons, parties hereto of the first part, doth hereby for himself and herself, his and her heirs, executors, administrators, acts, deeds, and defaults respectively, further covenant, promise and agree with and to the said                      their executors and administrators, in manner following (that is to say), that they the said persons, parties hereto of the first part, and their several and respective heirs, executors, administrators and assigns, shall and will faithfully observe, perform, and abide by the several stipulations, rules and regulations hereinafter mentioned (that is to say),

1st. That a capital not exceeding 500,000*l.* sterling in the first instance shall be raised in shares of 50*l.* each, but that the



~~Said~~ committee hereinbefore named or to be appointed as hereinafter mentioned, shall have power from time to time to increase such capital, or other the capital for the time being, of the said undertaking, if they shall deem it advisable so to do, and to raise such additional capital in like shares of 50*l.* each, and to appropriate and allot the same either amongst the original subscribers to the said undertaking, and their several executors, administrators and assigns, or to other persons, as they may think proper.

2nd. That a deposit of 2*l.* 10*s.* per share shall be paid by each subscriber on the number of shares subscribed for by him or her To pay deposit.  
at the time of or previously to signing this contract.

3rd. That in case any such subscriber, his or her heirs, executors or administrators, shall neglect or refuse to execute such Parliamentary contracts or undertakings as are hereinafter provided for, or either or any of them, for the space of fourteen days after he or she shall have been required so to do, by notice in writing, signed by the secretary for the time being of the said committee, or by one of the solicitors, or by any two of the members of the said committee, and delivered to such subscriber, his or her executors or administrators, or left at or sent by post to his, her, or their last known or usual place or places of abode or business (the certificate of the said secretary, solicitor, or of the said two members of committee being hereby declared to be sufficient proof of such notice having been duly given), then and in such case it shall be lawful for the said committee, without further notice to the defaulting party, to pass a resolution declaring the shares of such last mentioned party in the said undertaking forfeited, and immediately thereupon such last mentioned party, and his or her heirs, executors and administrators, and all persons claiming under him, her, or them, shall lose and forfeit all share and interest in the said undertaking, and in the deposit money paid by him, her, or them, in respect thereof, and be utterly debarred from afterwards claiming any right or interest in, or to his, her, or their shares, and all such money, or any part thereof; and the said shares may be forthwith allotted by the said committee to any other person or persons desirous to hold the same. Parties neglecting to sign Parliamentary contract after fourteen days' notice to forfeit shares.

4th. That the said committee shall have power from time to time to add to their number from among the subscribers to the said undertaking and to supply in like manner any vacancies which may from time to time occur in the said committee. That committee may add to their number.

5th. That the said committee shall keep a minute book in which shall be recorded all their proceedings, and all the minutes shall be signed by the chairman or other member presiding at any meeting, and the minute so signed shall be and be held good and sufficient proof of the several facts and proceedings therein mentioned or referred to in all actions, suits, controversies and questions between and among the partners of the company. Committee to keep a minute book of their proceedings.

6th. That all questions before the said committee shall be

Majority present to bind minority, five to form a quorum.

decided by the votes of a majority of the members of the said committee then and there present, every such meeting of the committee consisting of not less than five members, and such majority of voters then present shall in all cases bind all the members whether present or absent, and the acts of the members of the committee so assembled shall be deemed the acts of the whole committee.

Power to elect chairman.

7th. That the said committee shall have power to elect a chairman, or shall from time to time choose one of their own number to preside at any of their meetings, and to sign their minutes, who shall in case the votes of members present including his own be equal have a casting vote, and that the said committee shall have full power from time to time to make and establish, and alter all such bye-laws, for their own government, as they may think necessary or expedient, also from time to time to name and appoint such sub-committee, temporary, or permanent out of their own body, as they may think expedient, and to delegate to such sub-committees, all powers which may appear necessary for the more ready conduct of their proceedings or any of them, which sub-committees may consist of such number and have such quorum, and be subject to such regulations, as they the said committee shall from time to time appoint.

To appoint sub-committee.

Powers of committee to cause surveys to be made and to employ officers.

8th. That the said committee shall have power to take such measures as they may deem expedient to carry the aforesaid railway communication between and into effect and particularly that they shall be at liberty to cause such surveys to be made, as they may think advisable besides such as have already been made and also estimates as well of the expense of effecting such railway communication as aforesaid, as of the traffic likely to pass thereon and for the purposes aforesaid, and for all other purposes which the said committee may deem desirable for the advancement of the said undertaking or for examining or testing the correctness of the plans or calculations of the promoters of any competing or other line or lines of railway, or of any parties opposing the said undertaking, that they shall have full power to retain, engage, appoint, or employ bankers, counsel, engineers, secretaries, solicitors, brokers, agents, surveyors, clerks, servants, workmen and others, and shall from time to time discontinue the employment of such persons or suspend or remove them and re-engage or employ them or others in like manner ; and power is also hereby given to the said committee to enter into all such contracts and agreements as they shall deem advisable for the making of surveys and estimates for the execution of the works now contemplated or any part or parts thereof, and also for the construction and execution of the same works or any part or parts thereof in the event of an act or acts of Parliament being obtained, or for any other purposes which they may deem necessary in reference to all or any of the purposes aforesaid or in order to forward the said undertaking.

And further that they shall be at liberty and have full power to enter into any bargains, contracts, arrangements, or agreements with land-owners, railway or canal companies, corporations and promoters of other similar or competing schemes which may in their judgment be advisable for facilitating the obtaining of an act of Parliament, and for the accomplishment of the aforesaid railway communication, or any part or parts thereof and to agree with others desirous to obtain powers to lease, take, or acquire the whole or any part or parts of the same line of railway, either to grant to them a lease thereof, or to surrender to them the same or any part or parts thereof, or to permit them to hold stock in this undertaking, and to have such control in the management thereof, as may appear reasonable or otherwise, as the said committee may seem advisable, and particularly that the said committee shall be at liberty and have full power to grant a lease of the said line in perpetuity to the directors of the said Railway, upon such terms and subject to such restrictions, reservations, and agreements, as the said committee may deem expedient, and that the said committee shall be at liberty and have full power to take such proceedings in Parliament or elsewhere, as they may deem expedient, for the purpose of opposing or altering the provisions of any bill or bills that may be solicited for the establishment of any railway or other work or undertaking which may, in their judgment, interfere with or tend to defeat the accomplishment of the said proposed railway communication, or to affect its interests, or which may compete therewith, and to make or support such application or applications to Parliament as they may think fit in the next session of Parliament, which will be in the year 1845, or any subsequent session or sessions, for an act or acts to carry into effect the said railway communication and the works connected therewith, or any part or parts thereof, and to fix upon and from time to time alter and vary the termini, route, course, and line of the said railway communication, and the sites or positions of the stations, depots, and works connected therewith, and to determine whether, and how far, and to what extent the said undertaking shall be carried out, deferred, or abandoned, and in like manner what branches, if any, to the said main railway shall form a part of the said undertaking : And in case the first act to be obtained in relation to the said undertaking shall authorize the construction of a part or parts only of the proposed railway communication between To enter into contracts, &c. and the aforesaid, that the said committee shall have power to make or support, in any subsequent session or sessions, such application or applications to Parliament as they may deem advisable for the construction of the remainder of the aforesaid railway communications, or any part or parts thereof, and generally to enter into, carry on, and make all such negotiations, arrangements, provisions, contracts, and agreements, and to make, do, and execute all such other acts, deeds, matters, and things To lease line, &c.

To oppose any other bills.

To vary line.

whatsoever in relation to the said undertaking, and to the application or applications to be made to Parliament as aforesaid, as they, the said committee, shall from time to time consider expedient.

Power to  
pay officers,  
&c.

9th. That the said committee shall have full power out of the money which shall come to their hands by way of deposit or payment of calls or otherwise in relation to the said undertaking, to pay and allow all such fees, salaries, and recompences to bankers, counsel, engineers, brokers, and other persons who may be employed by them as aforesaid, or who may have been already employed in relation to the said undertaking as they shall think right, and generally to apply such monies in and towards the fulfilment of any bargains, engagements, contracts, arrangements, or agreements into which they may have entered, or into which they are hereby empowered to enter, for the purposes aforesaid, and towards the cost of any works or proceedings connected therewith, and in and towards the soliciting, supporting, or opposing such bill or bills in Parliament as are herein-before mentioned, and in obtaining the necessary act or acts for carrying out the aforesaid railway communication, or any part or parts thereof, and generally in paying and satisfying all other costs, charges, and expenses which they may sustain or incur, or which may have been already sustained or incurred in relation thereto or otherwise, under and by virtue of these presents.

No call for  
more than  
10l. per  
share nor  
oftener than  
every three  
months.

Subscribers  
not liable  
beyond  
their shares.

Committee  
to nominate  
the first di-  
rectors.

May apply  
for further  
powers to a  
general  
meeting.

10th. That it shall be an instruction to the said committee to introduce into any bill or bills presented by them to Parliament, a clause providing that no call shall be made upon the subscribers to the said undertaking or any of them which shall exceed the sum of 10l. per share at any one time : and also that no more than four calls shall be made in any one year, and that there shall be an interval of three months at the least between every two calls, as also a clause to save harmless the several subscribers and proprietors of shares and their respective heirs, executors, administrators, and assigns from being liable in any event for any larger or other sum than what is set and subscribed opposite to their respective names as aforesaid.

11th. That the said committee shall be and they are hereby authorized to nominate the first directors to be appointed in and by any act or acts to be obtained to authorize the construction of any part of the railway communication so contemplated as aforesaid.

12th. That the said committee shall, if they think proper, be entitled to apply from time to time for advice or for instructions or for an enlargement of their powers to a general meeting of shareholders, and such general meeting shall be called by the chairman on their request by an advertisement, inserted at least once in one newspaper, published in each of the cities or towns of                      and                      and                      ten days previous to such meeting, and the subjects to be discussed thereat.

13th. That each shareholder may either attend such general meeting personally or give a proxy to another shareholder who holds not less than twenty shares to act for him, and each shareholder present or represented shall have a voice in proportion to the amount of stock or number of shares held by him, of which the production of scrip to be issued by the said committee shall be the sole evidence.

Shareholders may give proxy.

Votes to be in proportion to shares.

14th. That whatever advice or instructions or powers shall be given to the committee, at any such general meeting on the special subject for which such meeting shall have been called and advertised, shall be considered as the advice or instructions, and as the act of all the shareholders in the undertaking whether present or absent, and it shall be binding on them in so far as not inferring an alteration of the fundamental rules and objects of the company.

Majority at meeting to bind all shareholders.

15th. That in the event of such act or acts not being passed into a law each of the said several persons, parties hereto of the first part, and their several and respective heirs, executors, administrators, and assigns, shall, and will well and truly bear, pay, allow and discharge the expenses already incurred or hereafter to be incurred relative to the surveys and estimates for the said railway and other works, solicitors' and counsels' fees, travelling expenses, and all other costs and charges of every description, incident to the proposed undertaking, and to the application or applications to Parliament, such expenses, costs, and charges to be computed and assessed rateably upon the amount of the shares or sums taken and subscribed by each of the said several persons, parties to these presents of the first part respectively: And all the said several persons parties hereto of the first part do hereby for themselves severally and their several respective heirs, executors, and administrators, further covenant, promise, and agree with and to the said                      and                      their executors and administrators, that they the said parties hereto of the first part, their executors, administrators, and assigns, shall and will from time to time, whenever thereunto required by the said committee and on tender of such deeds to them for execution, enter into and execute such Parliamentary contract, or undertaking or contracts or undertakings, for the said line of railway or such part or parts thereof as the said committee may from time to time deem it advisable to apply to Parliament for power to construct, containing such clauses as the said committee shall consider reasonable and proper, such further deeds for carrying into execution the said proposed undertaking expressly binding themselves and their respective heirs, executors, and administrators to the payment of the several sums hereby subscribed by them respectively and in the form required by the standing orders of the Houses of Parliament to be executed by subscribers, to undertakings of a similar description, as shall for that purpose be prepared, by or under the direction of the said committee. In witness, &c.

If act not passed expenses to be borne in proportion to shares.

Covenant to execute parliamentary deeds or contracts.

ment under this act, the warrant appointing any such commissioner shall specify that he will not be entitled, by virtue of such appointment, to receive any salary or remuneration whatsoever.

Commissioners to exercise powers now vested in the Board of Trade.

IX. And whereas in some cases railway companies have exceeded the powers given to them under the acts constituting them, or have otherwise acted contrary to the provisions of the said acts, or of the general acts for regulating railways; be it enacted, that it shall be the duty of the said commissioners to prevent any such unlawful proceedings, by the exercise of any powers now vested in the lords of the said committee.

Commissioners to report to her Majesty and both Houses of Parliament upon any case specially referred to them.

X. And be it enacted, that it shall be the duty of the said commissioners to examine and report to her Majesty and both houses of Parliament upon any subject relating to any railway, or proposed railway, which shall be specially referred to them for their opinion by her Majesty, or by either house of Parliament; and in the case of any application to Parliament for any act for making or maintaining any railway, it shall be their duty, if so directed by her Majesty or by the authority of either house of Parliament, to inquire and report, on local inspection or otherwise,—

Firstly. Whether there are any lines or schemes competing with the proposed railway :

Secondly. Whether by such bill it is proposed to take powers for uniting with such railway, or proposed railway, any other railway or canal, or to purchase or lease any railway, canal, dock, road, or other public work, undertaking, or easement :

Thirdly. Whether by such bill it is proposed to constitute any branch railway, or any other work in connexion with the proposed railway :

Fourthly. Whether any plans, maps, and sections of any such proposed railway which, pursuant to any order of either house of Parliament, shall have been deposited in their office, are correct, and if not, in what particulars and how far they are incorrect, and whether or not, in the opinion of the commissioners, such errors as they shall find are material to the object for which such plans and sections are required.

Commissioners empowered to inspect and survey proposed railways.

XI. And be it enacted, that for the purposes aforesaid the said commissioners shall be empowered, by themselves, or by such inspectors as they shall appoint for that purpose, to inspect and survey any proposed line of railway, and for the purposes of any such survey they and their inspectors shall have all the powers which under an act passed in the fifth year of the

*Form of Parliamentary Contract.*

THIS indenture, made the                      day of                      in the year of our Lord one thousand eight hundred and                      , between A. B. C. D., &c. esquires, of the first part, and E. F. G. H., &c. gentlemen, of the second part, and the several other persons whose names are hereunto subscribed, and seals affixed, and in the schedule hereunder written and hereunto annexed (other than the said parties hereto of the first and second parts), of the third part : Whereas the several persons, parties hereto of the first, second and third parts respectively, have mutually contracted and agreed among themselves to make application to Parliament, in the present session thereof, for leave to bring in a bill in order to obtain an act to incorporate a company, and to give unto such company power to make and maintain a railway or railways, with all necessary and proper works and conveniences connected therewith (the commencement and terminus of which railway and railways are hereinafter particularly described), and also for power to levy and take tolls, rates, fares and duties on or in respect of passengers, and all goods, wares and merchandises and also all minerals and mineral substances and materials, and also of carriages passing along, through or over the said railway or railways, and for all and every such other powers and authorities as may be deemed expedient for facilitating the works and operations of the said company : And whereas, in order to enable the said persons, parties hereto of the first, second and third parts respectively, to make such application to Parliament as aforesaid, they have caused or procured their agents to prepare and advertise such notices as are by the standing orders of the two Houses of Parliament respectively required in such cases, and such notices have been advertised in the newspaper called the                      printed and published at                      , in the said county of                      and also in the *London Gazette*, and for the purpose of enabling the several persons, parties hereto of the first, second and third parts respectively to make such application as aforesaid, they have agreed to enter into this present subscription contract : Now this indenture witnesseth, that, for the purposes aforesaid, each of them the said several persons, parties hereto of the first part, doth hereby, for himself, his heirs, executors and administrators, and to the extent only of the sum or amount of money set opposite to his name in the sixth column of the said schedule, headed the "Amount of Subscription," and not further or otherwise, covenant, promise, undertake, declare and agree with, and to the said parties hereto of the second part, their executors and administrators, and each of them the said

parties hereto of the second part, and also each of them, the said several parties hereto of the third part doth hereby, for himself and herself, and for his and her respective heirs, executors and administrators, and to the extent only of the sum or amount of money set opposite to his or her name respectively in the said sixth column of the said schedule, covenant, promise, undertake, declare and agree with, and to the said parties hereto of the first part, their executors and administrators, in manner following; (that is to say) that they the said several persons, parties hereto of the first, second and third parts, have subscribed and do hereby subscribe the several sums set opposite to their respective names in the said sixth column of the said schedule, headed "Amount of Subscription," for the purpose of making, establishing and maintaining a railway or railways, to be called "the \_\_\_\_\_ Railway," with all proper works and conveniences connected therewith, to be and commence in and from a certain field, close, or parcel of land situate at or near \_\_\_\_\_, in the several townships of \_\_\_\_\_, within the borough of \_\_\_\_\_, and parish of \_\_\_\_\_, in the county of \_\_\_\_\_, passing thence from, into, through, over and along the several parishes, townships, districts, and extra-parochial or other places following; (that is to say) \_\_\_\_\_ and \_\_\_\_\_ all in the said county of \_\_\_\_\_, and terminating by a junction with the \_\_\_\_\_ and \_\_\_\_\_ Railway, at or near the station of the said \_\_\_\_\_ and \_\_\_\_\_ Railway, near the town of \_\_\_\_\_, in the township of \_\_\_\_\_, and parish of \_\_\_\_\_, in the said county of \_\_\_\_\_, also for the purpose of making, erecting, and maintaining one or more bridge or bridges, roadway or roadways, over a certain river, called the \_\_\_\_\_, situate at or near to \_\_\_\_\_, within the several parishes, township, and places of \_\_\_\_\_ and the \_\_\_\_\_, extra-parochial, in the said county of \_\_\_\_\_ at the place where the said first-mentioned railway or railways will pass over and across the said river, parallel with and adjoining such railway or railways, for the passage, use and transition of carts, carriages, goods, merchandise and passengers in passing and re-passing, or otherwise going upon or over such bridge or roadway; also for making and maintaining such additional and necessary roadways and footpaths, and extending the same on each or either end of such bridge or roadway as shall be expedient; and for the purpose also, so far as is lawful, of diverting or altering all such turnpike-roads, parish-roads, and other highways, rivers, navigations, streams, or running waters and railways within the said several parishes, townships, and extra-parochial and other places as may be required to be diverted or altered for the purpose or the proper construction of such railway or railways, bridge or roadway and works as aforesaid, and also for the compulsory purchasing and holding of



ements, and hereditaments within the said several townships, and places, or any of them, for the purposes, and for the purpose also of purchasing or renting a of or a right of transit on any other railway in the said f, and which said railway or railways, bridges, roadway or roadways respectively, and all the s and alterations necessary for making the same re- y, shall severally be made and constructed, and shall ained, established and conducted in such manner as provided for by an act or acts of Parliament, to be or by the several persons whose names are subscribed hedule hereunder written or hereunto annexed, some ore of them in the present session of Parliament: her, that they the said several persons, parties hereto st, second, and third parts respectively, shall and will truly pay or cause to be paid the amount set opposite respective names in the said sixth column in the said headed "Amount of Subscription," as and when the l from time to time be called for under and by virtue : or acts of Parliament, so to be applied for as afore- d, lastly, that in the event of no such act or acts of at being obtained as aforesaid, the said several persons, ereto respectively, and their respective executors, ators, and assigns shall and will bear, pay, and dis- l the costs, charges, and expenses incurred, sustained oned in or about the premises, or with a view to the ng or promotion of the said undertaking, all such expenses to be computed and assessed upon the said spectively according to the amount or sum or sums of y them respectively subscribed. In witness whereof, arties to these presents have hereunto, or in the said subscribed their names, and affixed their seals, the ear first above written.

The SCHEDULE to which the above-written Indenture doth refer.

Christian and Surname.	Description.	Place of Abode.	Signature.	Seal.	Amount of Subscription.	Amount paid up.	Witness's Name, Occupation, &c., and Place of Abode.	Date of Signature opposite to each respective Name.

*Another Form.*

THIS indenture made the                      day of                      one thousand eight hundred and                      between A. B., C. D., &c., esquires, of the first part: E. F., G. H., &c., gentlemen, of the second part, and the several persons whose names are subscribed and seals affixed to, and in the schedule hereunder written and hereunto annexed (other than the said parties hereto of the first and second parts,) of the third part: whereas the several persons, parties hereto of the first, second, and third parts respectively, have mutually contracted and agreed among themselves to make application to Parliament, in the next session thereof, for leave to bring in a bill in order to obtain an act to incorporate a company, and to give unto such company power to make and maintain a railway, with all proper works and conveniences connected therewith, (the commencement and terminus of such railway is hereinafter more particularly described,) and also for power to make and maintain a branch railway, with all proper works and conveniences connected therewith, the commencement and terminus of which branch railway are also hereinafter particularly described; and also for power to levy and take tolls, rates and duties on or in respect of passengers, and all goods, wares and merchandises, and all copper ores and other ores, metals, and minerals, granite stone and burnt lime; and also of carriages passing along, through or over the said railway or branch railway, and for all and every such other powers and authorities as may be deemed expedient for facilitating the works and operations of the said company: And whereas, in order to enable the said persons, parties hereto of the first, second, and third parts, to make such application to Parliament as aforesaid, they have caused or procured their agents, Messieurs                      and                      of                      in the                      , to prepare and advertise such notices as are by the standing orders of the two Houses of Parliament respectively required in such cases, and such notices have been advertised in the newspaper called the                      and                      , and also in the *London Gazette*; and for the purpose of enabling the several persons, parties hereto of the first, second, and third parts respectively, to make such application as aforesaid, they have agreed to enter into this present subscription contract: Now, this indenture witnesseth, that for the purposes aforesaid, each of them the said several persons, parties hereto of the first part, doth hereby for himself, his heirs, executors, and administrators, and to the extent only of the sum or amount in money set opposite to his name in the sixth column of the said schedule, headed the "Amount of Subscription," and not further or otherwise, covenant, promise, undertake, declare,



provided for by an act or acts of Parliament, to be  
or by the several persons whose names are subscribed  
chedule hereunder written or hereunto annexed, some  
ore of them, in the now next session of Parliament;  
er that they the said several persons, parties hereto of  
second, and third parts, shall and will well and truly  
se to be paid the amount set opposite to their respective  
the said sixth column in the said schedule, headed  
: of Subscription," as and when the same shall from  
ne be called for under and by virtue of the act or acts  
ent so to be applied for as aforesaid. In witness whereof  
arties to these presents have hereunto or in the said  
ubscribed their names and affixed their seals the day  
first above written.

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*Certificate of Justices, that lands have been omitted by mistake.*

WE, J. P. and J. B. &c. two &c., acting &c., having carefully inquired into the circumstances and had good and satisfactory proofs adduced before us of the facts, do hereby in pursuance and exercise of the power and authority given and granted to us by (naming the act), certify that the several tenements, hereditaments, and buildings hereinafter mentioned, specified in the schedule hereunto written, were by mistake omitted to be inserted in schedule to the said act of Parliament: we do further certify that the several omissions referred to in this our certificate, or in the schedule hereunto written, have proceeded from mistake, and that the said several tenements, buildings, hereditaments, and premises, in this our certificate mentioned and referred to, appear to us to be required for the purposes of the said railway, by the said act authorized to be done, and to be within and subject to the powers and authorities conferred and by the said act given to the company of proprietors hereby incorporated. As witness, &c.

No. of the n.	Owners or reputed Owners.	Lessees.	Occupiers.	Description of Property.

*Form of Notice of taking Lands for temporary purposes  
under the Railway Clauses' Consolidation Act.*

Under the powers vested in the railway company by virtue of the several acts relating to the railway and particularly of an act of Parliament called "the Railway Clauses' Consolidation Act, 1845," whereby it is enacted, that subject to the provisions therein and in the special act contained, it shall be lawful for the company at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender and deposit to enter upon any lands within the prescribed limits, or if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house near a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith hereinafter mentioned, and to use the same for any of the following purposes (that is to say), for the purpose of taking earth or soil by side cutting therefrom, for the purpose of depositing spoil thereon, for the purpose of obtaining materials therefrom for the construction or repair of the railway on such accommodation works as aforesaid, or for the purpose of forming roads thereon, to or from, or by the side of the railway. And in the exercise of the powers aforesaid, it shall be lawful for the company to deposit, and also to manufacture and work upon such lands materials of every kind, used in constructing the railway, and also to dig and take from out of any such lands, any clay, stone, gravel, sand, or other things that may be found therein, useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid, to erect thereon workshops, sheds and other buildings of a temporary nature.

And whereby it is enacted, that in all cases in which the company shall in exercise of the powers aforesaid, enter upon any lands for the purpose of making spoil banks, or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as under the provisions in "the Land Clauses' Consolidation Act, 1845" mentioned, would enable them to sell or convey lands to the company at any time during the possession of any such lands by the company, and before such owners or occupiers



shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interest therein capable of being sold and conveyed to them respectively, and in such notice, such owners or occupiers shall set forth the particulars of such their estates or interests in such lands, and the amount of their claim in respect thereof, and the company shall thereupon be bound to purchase the said lands on the estates and interests therein capable of being sold and conveyed by the parties serving such notice; and enacting likewise, that in any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special act granted, it shall be incumbent on the company within one month after their entry upon such lands upon being required so to do, to pay to the occupier of the said lands, the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands; and that they shall also from time to time, during their occupation of the said lands, pay half-yearly to such occupier, or to the owner of the lands as the case may require, a rent to be fixed by two justices in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them, by reason of the exercise as regards the said land of the powers herein or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

The company do hereby give you notice that it is their intention, at the expiration of three weeks from the service of this notice, by their agents and workmen, and for the purposes hereinbefore referred to or some of them to enter upon the lands described or referred to in the plan hereunto annexed.

Dated, &c.

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*Notice to treat for Lands.*

You are hereby required to take notice, that by virtue and under the authority of the following acts of Parliament, or of one of them, to wit, "The Lands' Clauses Consolidation Act, 1845;" "The Railway Clauses Consolidation Act, 1845;" "The Companies Clauses Consolidation Act, 1845;" and

(naming the special act) all that parcel of land, together with the buildings, if any, thereon, and other the tenements and hereditaments mentioned and described in the schedule hereunder written and delineated, &c., belonging or reputed to belong to you, or some or one of you, or in whom you, some or one of you, have or claim some estate or interest, are required by the said company, and are intended to be taken and used for the purposes of the said acts or one of them; and you are hereby required to deliver to me, or at the office, &c., a statement in writing of the particulars of the estates, share, interest, or charge, which you claim to be entitled to, or to be authorized to receive satisfaction or compensation for, of, or in the said lands so required to be taken and used (here state the section of the special act, if any, under which the parties are required to treat with the company for the sale, &c., of their interests, and for compensation for loss or injury, &c.), "and you are hereby further required to take notice that, if for the space of twenty-one days next after the service of this notice, you shall neglect or refuse to agree, or shall not agree with the company for the value, and also for the sale, conveyance, and release of your said estate and interest, and for the satisfaction, recompense, or compensation to be paid for any damage, loss, or injury sustained by you or any of you, by reason of the execution of any of the powers of the said acts, or either of them, authorized, or by reason of the severing and dividing of your or any of your land, and also for or on account of any damage, loss, or inconvenience, which may be sustained by you or any of you, by reason of the taking of the said lands, hereditaments, &c., for the purposes of the said act, or by reason of the execution of any of the powers of the said act; or if you or any of you shall by reason of any impediment or disability, whether provided for by the said first-mentioned act or not, be incapable of making such agreement, conveyance, or release, as shall be necessary or expedient for enabling the company to take such lands, &c., or to proceed in making the said railway or other works; or shall not disclose and prove the state of the title to the premises of which you may be in possession, or of the share, interest, or charge which you may claim to be entitled to or interested in; or in case an agreement for compensation for the purchase of the said lands, &c., cannot be made, then the company will issue a warrant for the purpose of causing a jury to be summoned, in manner prescribed by the said acts, for making such inquiry and assessment as is therein specified, and will also take such further proceedings as, under any of the circumstance hereinbefore mentioned, they are by either of the acts empowered to do."

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*Notice of a Call.*

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*Railway.*

Notice is hereby given that at a meeting of the directors of the            railway company held this day, a call of £    per share was ordered to be paid to the treasurer of the company at  
    on or before            the            day of            next.  
 (Signed by order.)

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*Form of a declaration for Railway Calls, under the  
 Companies' Consolidation Act.*

In the Queen's Bench.

The            day of            A.D.

The            [railway company] by A. their attorney  
 complain of B. who has been summoned to answer the plain-  
 tiffs, by virtue of a writ issued on the            day of            A.D.  
 out of the Court of our lady the Queen, before the Queen her-  
 self at Westminster in an action of debt, and the plaintiffs  
 demand of the defendant the sum of 100*l.* which he owes to  
 and unjustly detains from them. For that whereas, the defendant  
 before and at the time of the commencement of this suit, to  
 wit on the            day of            A.D. was and still is the holder of  
                                  shares in the said            railway company, and at the time  
 of the commencement of this suit was and still is indebted to  
 the plaintiffs in the sum of 100*l.* for one call of the sum of  
 upon each of the said            shares, theretofore to wit on, &c.,  
 duly made by the said company, and by reason of the said sum  
 of 100*l.* being and remaining wholly unpaid to the plaintiffs, an  
 action hath accrued to the plaintiffs by virtue of a certain act of  
 Parliament made and passed in a session of Parliament, holden  
 in the eighth and ninth years of the reign of her Majesty Queen  
 Victoria, intituled "An Act for consolidating in one act certain  
 provisions usually inserted in acts with respect to the constitu-  
 tion of Companies incorporated for carrying on undertakings of  
 a public nature," and also by virtue of a certain other act of  
 Parliament made and passed in the            year of the reign of  
 intituled "An Act, &c. [*insert the date and title of the special  
 act*], to demand and have of and from the defendant the said  
 sum of 100*l.* above demanded, yet the defendant hath not paid  
 the said sum above demanded, or any part thereof to the  
 damage of the plaintiffs of £            and thereupon they bring  
 their suit, &c.

[The damages stated must be sufficient to cover all demands for interest, for which it is unnecessary to insert a count, *vide Southampton Dock Company v. Richards*, 1 M. & Gr. 448.]

For forms of declarations on railway calls before the act 8 Vict. c. 16, *vide ante*, 136, and the *Edinburgh, Leith and Newhaven Railway Company v. Hebblewhite*, 6 M. & W. 707. *The Sheffield, Ashton-under-Lyne and Manchester Railway Company v. Woodcock*, 7 M. & W. 574. *Birmingham, Bristol and Thames Junction Railway Company v. Locke*. 2 Railway Cases, 867. *The Cheltenham and Great Western Union Railway Company v. Daniel*, 2 Railway Cases, 728.

*The Aylesbury Railway Company v. Mount*. 3 Railway Cases, 469. 2 Id. 679. Special count for calls. *The West London Railway Company v. Bernard*, 13 L. J. N. S., Q. B. 68.

And for a precedent of counts stating special matters as well as a common statutory count, *vide the declaration in the Great North of England Railway Company v. Biddulph*, 7 M. & W. 243.

Form of a declaration in debt against a railway company, by a tenant for a term of years to recover the amount of purchase money and compensation assessed by a jury summoned by the sheriff of Middlesex upon a request of the plaintiff, and after a refusal of the company to issue their warrant for the return of a jury (under a Railway Act 6 & 7 W. 4, c. 123.) *Corregal v. the London and Blackwall Railway Company*, 5 M. & G. 250; 3 Railway Cases, 411.

Form of declaration against a Railway Company for not delivering scrip. *Walstab v. Spottiswoode*, 15 L. J. N. S., Exc. 193.

Form of declaration against a Railway Company for refusing to carry goods. *Pickford v. Grand Junction Railway Company*. 2 Railway Cases, 592.

Form of declaration against a Railway Company for not safely carrying plaintiff. *Carpue v. The London and Brighton Railway Company*, 13 L. J. N. S., Q. B. 133. 3 Railway Cases. 692.

Form of a declaration against a Railway Company on a covenant to stop the trains at a certain station. *Rigby v. The Great Western Railway Company*, 4 Railway Cases, 190.

Forms of declaration for a refusal to accept and pay for shares, *Hebblewhite v. McMorine*, 6 M. & W. 200. *Steward v. Cauty*, 3 Railway Cases, 616.

Form of a declaration on an undertaking by the vendee of shares to indemnify the vendor for calls which he might be compelled to pay after the sale and before the registration of the shares in the defendant's name, *Humble v. Langston*, 2 Railway Cases, 533.

Form of a declaration for not paying rent on a demise by deed at a certain rent of dividends to arise from railway shares, containing a covenant to pay the rent. *Beckett v. Bradley*, 14 L. J., N. S., C. P. 3.

Form of declaration in case, for not registering plaintiff's name and not delivering to him a certificate of shares. *Daly v. Thompson, Secretary to the Anti Dry-Rot Company*, 10 M. & W. 309.

Form of a declaration for not transferring shares sold. *Hare and another, Assignees of Jones v. Waring*, 3 M. & W. 362 ; and see cases referred to, *ante*

*Stephens v. De Medina*. 3 Railway Cases, 454. *Shaw v. Holland*, 4 Railway Cases, 150. *Tempest v. Kilner*, 15 L. J., N. S., C. P. 10 ; 9 Jurist, 1038.

Pleas,

In action for calls that the defendant had transferred his shares before the call was payable, *Aylesbury Railway Company v. Mount*, 2 Railway Cases, 679, and 4 M. & G. 651, decided to be bad as amounting to general issue, S. C., in error, 3 Railway Cases, 469. In an action for calls the general issue puts in issue whether the defendant has forfeited his shares, 8 Scott, 540, and *semble* all matters required to be proved by the company by statute, 6 M. & W. 707 ; 12 L. J., N. S., Exc. ch. 474 ; 6 B. N. C. 135.

Plea to an action for not accepting shares, and replication by way of special traverse. *Stewart v. Cauty*, 2 Railway Cases, 616.

To action for not transferring shares, that plaintiff not ready, &c. to accept. *Tempest v. Kilner*, 15 L. J., N. S., C. P. 10.

Plea that railway company not completely registered under 7 & 8 Vict. c. 110, 4 Railway cases, 135. *Lawton v. Hickman*, 10 Jurist, 543 ; and replication that company not within 7 & 8 Vict. c. 110., *Lawton v. Hickman*, and see *Loonie v. Oldfield*, 7 Law Times, 431 ; *Fisher v. Aide*, Id. ; *O'Neil v. Brindle*, Id. : *Ray v. Hirst*, Id.

To action for money paid, plea that the money was paid for railway shares, and plaintiff refused to deliver certificates is bad as amounting to the general issue, 2 P. & D. 569.

*Form of inquisition by the Sheriff in a compensation case when the party appears but refuses to adduce evidence or to take any part in the proceedings.*

An inquisition indented, taken pursuant to the act hereinafter mentioned, at \_\_\_\_\_ on the \_\_\_\_\_

Somerset-  
shire to wit.

\_\_\_\_\_ day of \_\_\_\_\_ A.D. ,  
before me \_\_\_\_\_, Esq., sheriff of the county aforesaid,  
by virtue of a certain warrant hereunto annexed, under the  
hands and seals of M. N. O., being three of the directors of the  
\_\_\_\_\_ company, established and incorpo-  
rated by an act of Parliament passed in the session, holden in  
the \_\_\_\_\_ years of his late Majesty William the Fourth, on  
the oath of \_\_\_\_\_ and \_\_\_\_\_ good and lawful men  
of my said county qualified according to the laws of this realm,  
to serve on juries in her Majesty's courts of record at West-  
minster, notice in writing having been here to me duly given to  
A. B. \_\_\_\_\_ for and on behalf of the  
said company according to the said act, that the lands, heredi-  
taments, and premises hereinafter mentioned, were required by  
the said company for the purposes of the said act, and the said  
A. B. not having within the space of twenty-one days, and more  
after the giving of such notice agreed with the said company for  
the sale, conveyance, or release of the said lands, hereditaments  
and premises, or of his estate and interest therein, and notice in  
writing of the time and place at which the jury were required to  
be returned having been duly given fourteen days, and more be-  
fore the said \_\_\_\_\_ day of \_\_\_\_\_ which said G. I. S.,  
&c., being sworn to inquire of, and concerning the matters  
mentioned in the said warrant and thereby directed to be inquired  
of, assessed and ascertained by them in manner therein men-  
tioned and the said company by their counsel having at the time  
and place aforesaid appeared before me and the said jurors, and  
having adduced evidence before me and the said jurors touching  
the matter in question, and the said A. B. in the said warrant  
named having also appeared, but having declined to adduce any  
evidence or otherwise to take part in the proceedings then and  
there had before me and the said jurors, the said jurors on their  
oath aforesaid say that they do assess and give a verdict in the  
sum of two hundred pounds, to be paid to the said A. B. for the  
purchase of the estate, right, title, and interest of the said A. B.  
of and in certain (setting out the property), in the parish  
of \_\_\_\_\_ in the said county of \_\_\_\_\_ distinguished  
in the map or plan and book of reference deposited in the  
office of the clerk of the peace of the said county, and  
referred to by the said act by the numbers 1, 2, 3, &c., and of  
all clay, &c. about to be taken and used in execution of cer-  
tain of the powers granted by the said act, and the said

jurors do in like manner assess and give a verdict for the further sum of one hundred pounds, to be paid to the said A. B. by the said company as well by way of satisfaction, recompence or compensation for the damages which have before the aforesaid       day of       been done to or sustained by the said A. B., by reason of the execution of any of the works by the said act authorized, as for the damage to be by the said A. B. sustained by reason of the severing or dividing the lands aforesaid, and I, the said sheriff, do hereby pursuant to the said act, adjudge and order the several sums of two hundred pounds and one hundred pounds, making together the sum of three hundred pounds, to be paid by the said company to the said A. B.

[In witness, &c.]

(The notice to take lands, and the warrant, which should recite the notice, should be annexed to the inquisition, either preceding or following it. Variations in this form, according to circumstances, will easily suggest themselves.)

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### *Model Code of Bye-laws.*

The following model code of bye-laws, compiled from those which previously to the passing of the 3 & 4 Vict. c. 97, *ante*, p. 97, had been generally adopted under the sanction of the judges or justices, has been sanctioned by the Board of Trade, and adopted by many of the principal passenger railway companies.

1. No passenger will be allowed to take his seat in or upon any of the company's carriages, or to travel therein upon the said railway, without having first booked his place, and paid his fare. Each passenger booking his place will be furnished with a ticket, which he is to show when required by the guard in charge of the train, and to deliver up before leaving the company's premises, upon demand, to the guard, or other servant of the company duly authorized to collect tickets. Each passenger not producing or delivering up his ticket will be required to pay the fare from the place whence the train originally started.

2. Passengers at the road stations will only be booked conditionally, that is to say, in case there shall be room in the train for which they are booked : in case there shall not be room for all the passengers booked, those booked for the longest distance shall have the preference ; and those booked for the same distance shall have priority, according to the order in which they are booked.

3. Every person attempting to defraud the company by riding in or upon any of the company's carriages without having previously paid his fare, or by riding in or upon a carriage of a higher class than that for which he has booked his place, or by continuing his journey in or upon any of the company's carriages beyond the destination for which he has paid his fare, or by attempting in any other manner whatever to evade the payment of his fare, is hereby subjected to a penalty not exceeding forty shillings.

4. Smoking is strictly prohibited both in and upon the carriages, and in the company's stations. Every person smoking in a carriage is hereby subjected to a penalty not exceeding forty shillings; and every person persisting in smoking in a carriage or station, after being warned to desist, shall, in addition to incurring a penalty not exceeding forty shillings, be immediately, or, if travelling, at the first opportunity, removed from the company's premises and forfeit his fare.

5. Any person found in the company's carriages or stations in a state of intoxication, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers; and every person obstructing any of the company's officers in the discharge of their duty, is hereby subjected to a penalty not exceeding forty shillings, and shall immediately, or, if travelling, at the first opportunity, be removed from the company's premises and forfeit his fare.

NOTE.—Persons wilfully obstructing the company's officers, in cases where personal safety is concerned, are liable under the 3 & 4 Vict. c. 97, s. 16, to be apprehended and fined five pounds, with two months' imprisonment in default of payment.

6. Any passenger cutting the linings, removing or defacing the number plates, breaking the windows, or otherwise wilfully damaging or injuring any of the company's carriages, shall forfeit and pay a sum not exceeding five pounds, in addition to the amount of damage done.



*Notice to Owners of Land.*

No.

Sir,

We beg to inform you that application is intended to be made to Parliament in the ensuing session for "An Act" [*here insert the Title of the Act*], and that the property mentioned in the annexed Schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of \_\_\_\_\_ yards on either side of the said line which will be applied for in the said Act and will be passed through in the manner mentioned in such Schedule.

We also beg to inform you that a Plan and Section of the said undertaking, with a Book of Reference thereto, has been or will be deposited with the several Clerks of the Peace of the counties of [*specify the counties in which the property is situate*], on or before the 30th of November, and that copies of so much of the said Plan and Section as relates to the parish in which your property is situate, with a Book of Reference thereto, has been or will be deposited for public inspection with the Clerk of the said parish, Schoolmaster of the parish, Town Clerk of the Royal burgh, or the Postmaster of the post town in or near such parish [*as the case may be*], on or before the 31st day of December instant, on which plans your property is designated by the numbers set forth in the annexed Schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality, in the Form left herewith, and returning the same to us with your signature on or before the \_\_\_\_\_ day of \_\_\_\_\_ next; and if there should be any error or misdescription in the annexed Schedule, we shall feel obliged by your informing us thereof, at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient servants.

To \_\_\_\_\_

SCHEDULE referred to in the foregoing Notice, and which is intended to show the property therein alluded to, and the manner in which the Line of the deposited Section will affect the same.

—	Parish, Township, or Extra parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	Description of the Section of the Line deposited, and of the greatest height of Embankment and depth of Cutting.
	Property in the Line as at present laid out.						
—	Parish, Township, or Extra parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	—
	Property within the Limits of the Deviation intended to be applied for.						

*Minute of the Lords of the Committee of Privy Council for Trade, dated the 10th day of July, 1845, relative to the Constitution and Mode of Proceedings of the Railway Department of the Board of Trade.*

At the Council Chamber, Whitehall, the 10th July, 1845.

By the Right Honourable the Lords of the Committee of Privy Council appointed for the consideration of all matters relating to trade and foreign plantations.

My Lords read and considered the following Minute of the Lords of the Committee of Privy Council for Trade, dated 6th August, 1844, relative to the constitution and mode of proceedings of the railway department.

*Railway Department.*

Minute of the Lords of the Committee of Privy Council for Trade relative to the constitution and mode of proceedings of the railway department.

At the Council Chamber, Whitehall, the 6th August, 1844.

By the Right Honourable the Lords of the Committee of Council appointed for the consideration of all matters relating to trade and foreign plantations.

My Lords read and considered the following paragraphs and resolutions, taken from the third section of the fifth report of the select committee of the House of Commons on railways, (1844) :—

In recommending, therefore, that railway bills be submitted to the Board of Trade previously to their coming under the notice of Parliament, the committee conceives that that Board (or such other public department as may be intrusted with the care of railway matters) might advantageously examine these bills, and also the schemes themselves, before they had assumed the form of bills, with regard mainly to the following subjects :—

1. All questions of public safety.
2. All departures from the ordinary usage of railway legislation, on points where such usage has been sufficiently established.
3. All provisions of magnitude which may be novel in their principle, or may involve extended consideration of public policy. For example : amalgamations and agreements between separate companies ; extension of capital ; powers enabling railway companies to pursue purposes different in kind from those for which they were incorporated ; modifications of the general law.

4. Branch and extension lines, in cases where, upon the first aspect of the plan, a presumption is raised that the object of the scheme is to throw difficulties in the way of new and probably legitimate enterprises.

5. New schemes, where the line taken presents a strong appearance of being such as to raise the presumption that it does not afford the best mode of communication between the termini, and of accommodating the local traffic.

6. Cases where a bill of inferior merits may be brought before Parliament, and where a preferable scheme is in bonâ fide contemplation, although not sufficiently forward to come simultaneously under the judgment of Parliament according to its standing orders.

7. Any proposed arrangements with subsisting companies which may appear as objectors to new lines.

The adequate and satisfactory discharge of their duties would entail upon the Board of Trade a great additional amount of labour and responsibility; and it is the opinion of the committee, that if the recommendations of this and of its other reports should be adopted, it would be necessary to enlarge the railway department of that Board, and to improve its organization. Upon these grounds, and with these intentions, the committee have come to the following

Resolution,—That it is expedient that all railway bills should henceforward be submitted to the Board of Trade previously to their introduction into Parliament; and that the various documents and other requisite information connected with each project, and, if necessary, copies of the plans and sections of the line, shall be lodged at the office of the Board of Trade, at such periods as may afford sufficient opportunity for their examination.

My Lords read and considered the heads of several clauses of the railway bill (now awaiting the royal assent) which relate to the functions of this department.

My Lords read the letter of Mr. Lefevre to Sir George Clerk, dated the 2d instant, in which it is proposed that provision should be made for the appointment of two secretaries to the railway department of this Board, and of an assistant inspector, and the reply of the 5th instant, in which is stated the approval of these arrangements by the Lords of the Treasury.

My Lords are of opinion that they are not competent, without the aid of time and experience, to lay down definite and sufficient rules for the future practice of the railway department of this Board; but they have decided upon the following general instructions (subject, of course, to reconsideration hereafter, if in any particulars they should be found inapplicable or inconvenient), with respect to—

1. The constitution of a Board for the purpose of transacting railway business.

2. The preparation of Minutes and Reports.

3. The provisions to be made for obtaining adequate and early information.

2. My Lords are of opinion that for the adequate and satisfactory discharge of the duties which, as is now proposed, will evolve upon this committee, it is desirable that a distinct board should be constituted in the department for the despatch of railway business, and that such business shall be settled by written Minutes, in the same manner as the ordinary business of this committee.

The president or the vice-president of the committee will act as the head of this Board, and the remaining members of it will act as his advisers in all its transactions, and subject to his controlling authority.

The ordinary members of the Board will be, besides the inspector-general, and, in his absence, the assistant-inspector, the superintendent, and the joint secretaries.

2. Every Minute of the Board upon a railway scheme, and every Report upon a railway bill, to have the signatures of,

Firstly, the president or vice-president of this committee ;  
and,

Secondly, three members of the Board, one of whom at least to be an engineering officer of the department.

As respects Minutes upon railway schemes to be made before the bills for giving effect to them are framed, my Lords direct that whenever the department has formed an intention to prepare such a Minute, whether upon the application of parties or otherwise, notice shall be given of that intention in the Gazette, or the information of those whom it may concern.

My Lords direct that in such notice shall be stated, as nearly as may be, the points into which inquiry is to be made in connexion with the proposed line of railway. No such Minute, unless of a preliminary or provisional nature, shall be signed until six weeks after such notice. Every such Minute shall be published forthwith in the Gazette ; and every such Minute shall be laid on the table of both Houses of Parliament fourteen days after the opening of the session.

Reports to Parliament on railway bills shall be made within fourteen days, if there shall have been previous report on the schemes embodied in them respectively, and at all events within six weeks at the furthest from the receipt of any such bill.

3. As regards the measures to be taken for obtaining early and regular information respecting railway bills, and railway projects before they have assumed the form of bills.

Adverting to the resolutions already adopted by the House of Commons on the 19th July, and to those which it is the intention of the vice-president to propose for adoption in the House of Lords, and also to the provisions contained in the Joint Stock Companies Registration and Regulation Bill, which, if

that bill shall become law, will ensure the deposit in a public office, under the superintendence of this department, of all documents made public by the promoters of any such joint stock undertaking as may be formed subsequently to the passing of the act, my Lords are of opinion that there will be adequate security for their being duly apprised, from time to time, of the origin and progress of future railway projects up to the periods of the presentation of the bills.

To make similar provision for their subsequent stages, before the passing of the Acts of Incorporation, my Lords will cause to be addressed to all the Parliamentary agents the circular hereto annexed (A.)

As regards railway projects already announced to the public during the present year, and now in existence, but not having assumed the form of law, my Lords direct a list to be prepared of these, and the circular letter (B). hereto annexed to be addressed to the solicitors or other leading promoters of them.

Having adverted to the various important changes which have been effected by the House of Commons, during the present session, in the constitution and proceedings of the select committees appointed to consider the provisions of railway bills, and considering that this altered state of circumstances appears to render it unnecessary that the railway department should continue, in pursuance of the recommendation of the select committee on railways of 1844, to submit to Parliament reports on the comparative merits of railway schemes, my Lords are of opinion that it is desirable to make certain alterations in the form of the railway department and in the rules for conducting railway business.

I. My Lords are of opinion that the distinct Board constituted by the Minute of 6th of August, 1844, should be discontinued; and that all railway business should hereafter be transacted by the Lords of the Committee of Privy Council for Trade, in the same manner as the ordinary business of this committee.

II. All such railway business, however, shall be transacted by proceedings distinct from the ordinary business of this committee. The despatch of railway business shall be conducted by separate written Minutes; and the directions and decisions of the Lords of the Committee shall be carried into effect by the several officers of the railway department.

III. Reports will not hereafter be prepared for Parliament, conveying the opinion of the Lords of this Committee on the merits of any railway project, or on the comparative merits of competing schemes.

IV. But in order that my Lords, with a view to guarding the public interest, may have at all times an accurate knowledge of the objects of the various railway schemes, and of the extent of the powers which the promoters desire to obtain, my Lords

direct that the proper steps should be taken for submitting to the two Houses of Parliament the necessity of adopting resolutions requiring the promoters of the various schemes to deposit, as heretofore, at the Board of Trade, a copy of the plans, sections, &c. It would also be expedient that they should be required to deposit, concurrently with their plans and sections, a sketch of the proposed lines, on an ordnance map of England, or on a scale equal to such ordnance map, and also a written statement containing a description of the railway, its course, its advantages, its proposed fares and charges, and the principal provisions of the bill which they intend to introduce.

It would further be desirable that the promoters should deposit, as heretofore, with the Board of Trade, a copy of the bill, as well as of such amendments as may be made during its progress.

V. If upon examination of any railway bill it should seem expedient to the Lords of this Committee to draw the attention of Parliament to its provisions, or to circumstances connected with it, my Lords, after the commencement of the session, and from time to time as they may seem fit, will direct a report to be prepared accordingly. Such report shall have reference to the following subjects :—

1. All questions of public safety.

2. All departures from the ordinary usage of railway legislation, where such usage has been sufficiently established.

3. All provisions of magnitude which may be novel in their principle, or may involve extended considerations of public policy. For example : amalgamations and agreements between separate companies ; extensions of capital ; powers enabling railway companies to pursue purposes different in kind from those for which they were incorporated ; modifications of the general law ; also fares and charges ; and generally all points connected with the bills to which my Lords may think it right on public grounds to draw the attention of Parliament. Such report shall be signed by the president or vice-president of this committee ; but it shall in no case pronounce an opinion on the actual or comparative merits of any railway scheme.

VI. My Lords direct that the annual report of the officers of the railway department to the Lords of the Committee of Privy Council for Trade shall be laid, as heretofore, on the table of both Houses of Parliament.

The rules which my Lords have now laid down for the transaction of railway business will be subject to reconsideration hereafter, if, from further change of circumstances, or otherwise, they should be found inapplicable or inconvenient.

*Foreign Railways.*

The following are the queries submitted to counsel, and the opinions thereon in reference to Foreign Railways.

1. Whether the East Indian Railway Company is within the purview and provisions of the act of 7 & 8 Vict. c. 110.
2. Whether the promoters of that company could legally have advertised or taken a deposit exceeding 10s. per cent. on their proposed capital.
3. Whether the promoters of that company, or any of them, having advertised without registration or taken a deposit exceeding 10s. per cent. would have been liable to any and what legal consequences for so doing.

We are clearly of opinion that the East Indian Railway Company is within the purview and provisions of 7 & 8 Victoria, c. 110. The general powers of that act are by sect. 2 declared to apply to all Joint-Stock Companies established in Great Britain (except Scotland, or established in Scotland with a place of business in Great Britain), for any commercial purpose or purposes of profit; and the true test whether such a company is within the provisions of the act or not is the place where it is established and not the place where the works are to be performed. The proviso in the same section exempts out of the general provisions of the act railway and other companies there specified, which require the authority of Parliament, for the purpose of making them subject to the special provisions thereafter provided by the 9th and 23rd sections, but not for the purpose of exempting them altogether from the operation of the act. This company, therefore, being established in Great Britain, and being a Joint Stock Company for the purpose of commerce and profit, is, in our opinion, directly within the provisions of this act, even though it does not require the authority of Parliament.

We therefore think that promoters of the East Indian Railway Company could not legally have advertised or taken a deposit exceeding 10s. per cent. on their proposed capital, and that if they did so, they would be liable to the penalties imposed by sections 5 and 24.

FREDERICK THESIGER.

FITZROY KELLY.

JOHN BAYLEY.

*Westminster, June 28, 1845.*



Opinion of Mr. Loftus Wigram.

1. I think that the company is within the purview and provisions of the Act 7 & 8 Victoria, c. 110. It is a company established in Great Britain for purposes of profit, and appears not to be within any of the cases which are exempted from the act.
2. I think that the promoters of the company could not legally have advertised or have taken a deposit exceeding 10s. per cent., on the proposed capital. I think this is the result of the 7th and 23rd sections of the act.
3. The pecuniary penalties imposed by the Act, do not seem to be applicable to the case in question, (see sec. 24); but it would have been highly improper for the promoters to have disregarded the provisions of the Act. I apprehend the consequence of such a course would have been, that the receipt of the extra deposits would have been an illegal transaction, and that the promoters might have evaded their proper responsibility to the shareholders for the due application of the deposits, a state of circumstances which might be highly prejudicial to the company.

LOFTUS WIGRAM.

*Lincoln's-Inn, June 28.*



# INDEX.

---

- BANDONMENT,**  
what may amount to of their powers by a Railway Company, 24.
- CESS,**  
to special act, 117, 118.
- COMMODATION WORKS,** 72, 74.
- ACCOUNT,**  
annual account to be made up and transmitted to the clerk of the peace, &c., 97.  
regulations concerning the keeping of, and inspection of by shareholders, 174, 175.
- ACCOUNT BOOKS,**  
of company to be open to the inspection of mortgagees and bond creditors, 152.
- ACCOUNTANT GENERAL,**  
of the Court of Chancery in England, or Exchequer in Ireland, money deposited in Bank to be placed to the account of, 233, 248.
- ACT OF PARLIAMENT,**  
principles applied to the construction of railway act, 7.  
regarded as a contract with the public, 7.  
ambiguities to be taken against companies, 7.  
construction of act embodying provisions of prior act, 10, 11.
- ACTION,**  
when sustainable against a company, 28.  
may be brought against a company for any damage not the necessary consequences of the powers conferred, 38.  
for tortious acts or negligence, 28, 29.  
for setting fire to stacks, 29.  
may be brought by any landowner omitted from the schedule, 31.  
on the case, by party suffering damage to right of way, 62.  
for damage done to easements generally, 63.  
against carriers.—See **CARRIERS**.  
enforcement of calls by, 134.  
against company for not purchasing after tender of conveyance, 230.
- ACQUIESCENCE,**  
effect of to deprive a party of his remedy against a Railway Company, 12.

**ADDRESSES,**

of shareholders to be registered, 125.

**ADMIRALTY,**

consent of required to works below high water mark, 32.

**AFFIDAVIT,**

for a mandamus to allow a branch railway to be made, 77.

of title to lands, entitles a party to obtain money paid into court, under section 79 of the Lands' Clauses Act, in the absence of counter affidavits, 242.

**AGENT,**

how far companies bound by agreement of, 8, 9.

Parliamentary, necessary qualifications of, App. 31.

responsibility and duties of generally, App. 31, *et seq.* 49.

name of, to be entered on petition, App. 42.

**AGREEMENT,**

effect of, relative to withdrawing opposition to bill, 9, 10.

by agent, how far binding on company, 8.

with a peer or member of Parliament, 9.

with landowner to purchase land binding, though land be not required, 10.

of former company, how far binding on a succeeding company, 10, 11.

when Court of Chancery will decree specific performance of, 32.

See SUBSCRIBERS' AGREEMENT.

purchase of land by, provisions respecting, 199, *et seq.*

**AIRWAYS,**

of mines.—See MINES.

**ALLOTMENT,**

of shares, App. 7—14.

letters of allotment, *ib.*

if more than the proper number of shares allotted, directors liable to holder of letters of allotment for which they cannot assign corresponding shares, App. 12.

**ALTERATION,**

of course of rivers, &c., 20.

**ALTERATION AND REPAIRS OF WORKS, 21.****AMALGAMATION, 165.****AMENDMENT,**

in bill made by committee, App. 50, 53, 65, 27.

in report of committee by the House, 45.

**AMENDS,**

in what cases tender of shall be a bar to action against company, 109, 182.

**APPEAL,**

to the Board of Trade against deviations, 17.

from decision of justices relative to the crossing of highways on the level, 65.

from determinations or adjudications of justices generally, 115.

notice of, *ib.*

**APPLICATION,**

to the Courts of Chancery or Queen's Bench.—See **INJUNCTION**,  
**MANDAMUS**, &c.  
 of capital, 155.  
 of calls, notwithstanding mortgage, 145.

**APPROACHES,**

of bridge, mandamus granted to widen, 55, 58.  
 approaches and fences to be made to highways crossed on the level, 66,

**AQUEDUCT,**

section and duplicate of to be deposited with plan, App. 17, 37.

**ARBITRATION,**

provisions concerning, 105—108, 178—180, 207.  
 compensation exceeding 50% to be settled by, at the option of party  
 claiming compensation, 207.  
 appointment of arbitrators, 105, 178.  
 in case of death or incapacity to act of arbitrator before and after  
 reference, provisions concerning, 106, 179.  
 appointment of umpire when more than one arbitrator, 106, 179.  
 powers of arbitrators, 107, 179.  
 declaration to be made by arbitrator and umpire, 107, 108.  
 costs to be in discretion of arbitrators, 108, 180.  
 submission to arbitration to be made rule of court, *ib.*  
 award not to be set aside for matter of form, *ib.*  
 appeal from decision of surveyor to arbitration, 229.  
 costs of such arbitration, *ib.*

**ARBITRATOR.**—See **ARBITRATION**.**ARCHES,**

to be marked on deposited plans, 18.—See **WORKS**.

**ARCHWAY,**

injunction to restrain company from making an archway over  
 streets, 26.

**ARRANGEMENT,**

what may be held to constitute an arrangement with a company  
 so as to deprive landowner of right to cross railway, 75.

**ARREARS,**

due on mortgages to be enforced by the appointment of a receiver,  
 150.

**ASCENT,**

of bridges, 55.

**ASSENTS, DISSENTS, AND NEUTERS,**

lists of, to be made, App. 20.

**AUDITORS,**

appointment, duties, election, qualification, and rotation of, 170.  
 vacancies in office of, *ib.*  
 delivery of balance sheet, &c., by directors to, 171.  
 duty and powers of, *ib.*

## B

**BANK,**

interpretation clause respecting, 5.

**BANKRUPTCY,**

proof of debts in, 181.

of Railway Companies, Add. xcvi.

**BILLS,**

private, must be solicited by a Parliamentary agent and introduced by a petition, App. 31, 42.

mode of passing through Parliament, App. 42, 31, *et seq.*

to empower a company already constituted by act of Parliament to execute any work other than that for which it was originally established, standing orders of the Lords concerning, App. 61.

**BOARD OF TRADE,**

abolished as to railways by 9 & 10 Vict. c. 105. App. 30. Add. cix.

constitution, powers, and practice of, App. 21, *et seq.*

power of, to decide concerning deviations, 17.

to order screen for roads to be made, 68.

to modify the construction of roads, bridges, &c., 68.

authentication of certificates of, 70.

deposit at, of plans, sections, and books of reference, on or before the 30th November, App. 39, 57.

now at office of commissioners, App. 30.

power to certify concerning, 18.—See **WORKS.**

power of to appoint umpire on neglect of arbitrator, 106, 179.

**BONA FIDE,**

extent to which the court will inquire whether company be acting *bona fide*, 26.

**BONDS,**

requisites of, 147.

register of, 148.

rights of obligees, 148.

form of, 192,

form of transfer of, 193.

**BOOK,**

of reference.—See **PLAN.**

**BRANCH RAILWAYS,**

power to make, under what conditions, 75.

to be regulated by the Board of Trade, App. 23, 30.

**BREVIA'TE,**

of a bill, orders concerning, App. 34, 52.

**BRIDGE,**

cases of interferences with bridges, and substitution of new ones, 25, 26, 27.

repair of, 68.

construction of, 68.—See **WORKS.**

**BRIDLE WAYS,**

approaches and fences to, crossed on the level, 66.

**BROOKS.—See RIVERS.**

**BUILDINGS,**

additional plan of, on enlarged scale, to be deposited with plans,  
App. 38, 55.

**BYE LAWS,**

power of company to make regulations by, 98, 176.  
publication of, 99.  
effect of, and proof of, 99, 178.  
under what conditions valid, and cases concerning, 176.  
fines for breach of, 177.

**C.****CALLS,**

power to make, 133.  
the validity of, 133.  
interest to be paid on calls unpaid, 134.  
enforcement of calls by action, declaration in action, 134.  
forms of declaration, Add. p. cxxxiii.  
evidence in actions for calls, 135.  
proof of proprietorship, 135—138.  
where the transferee by deed of a share has not registered, choice  
of action against either him or the registered proprietor, 136.  
condition precedent to action for calls, 137.  
pleas allowed and disallowed, 137, 139.  
statutory form of declaration is supposed to have alleged all things  
necessary to be proved, 139, and pleas denying any such things  
must conclude to the contrary, *ib.*  
resolution to make may be prospective. 134.

**CAPITAL,**

to be subscribed before compulsory powers of purchase to be put  
in force, 203.  
certificate of justices evidence of subscription of, 205.  
power to convert loan into, 152.

**CARELESSNESS,**

what may amount to on the part of a company, 29.

**CARRIERS,**

railway company common carriers, 83.  
definition of common carriers, 84.  
company liable as such for any obstruction or negligence, whereby  
passengers are injured or endangered, 84.  
unless where such obstruction or negligence felonious, when ser-  
vants alone can be indicted, 84.  
company to convey safely all goods, and liable for all injuries,  
except from the act of God and the king's enemies, carriers'  
act, 84.  
form of action against a carrier, 85.  
proper party to sue, 85.  
company bound to convey parcels, &c. safely, not only through-  
out their own line, but all branch lines connected with them, 87.  
action against company for goods destroyed by fire, 86.  
for damage to horses, 86.

**CARRIERS—Continued.**

company not to be liable to a greater extent than common carriers, 88.

power to vary tolls, 89.

tolls to be charged equally, 89,

construction of clauses concerning tolls, 89.

list of tolls to be exhibited on board, 92.

in default of payment of tolls goods may be detained and sold, 93.

account of lading, &c., to be given, 93.

dispute as to tolls, weights, &c., how to be settled, 94.

**CARRIAGE ROAD,**

interference with, 52, *et seq.*—See **WORKS.**

**CARRIAGES,**

brought on the railway, provisions concerning, 101, *et seq.*

**CERTIORARI.**

taken away, 115.

when applicable generally, 283.

under what circumstances it may be granted, when proceedings are not in pursuance of the act, 221.

**CERTIFICATES,**

of shares to be issued to shareholders, 125.

such certificates to be *prima facie* evidence of title, *ib.*

to be renewed when destroyed, 126.

of justices that lands have been omitted by mistake, 14.

of justices that a portion of the capital has been subscribed or paid up, 146.

of the Board of Trade authorizing deviation, 17.

**CHAIRMAN,**

of committee on bill, appointment of, App. 48.

of committee on bill, duties of, App. 46,

to vote only when committee equally divided, App. 48.

**CHANCERY,**

court of, may direct application of money in respect of leases or reversions, 233.—See **INJUNCTION.**

**CLERKS OF THE PEACE,**

deposit of plans, &c. with, on or before the 30th of November App. 19.

clerks of the peace take custody of plans, sections, &c. 15.

**COMMISSIONERS,**

interference of, under local paving acts; with railway, 53.

of drainage in Ireland, jurisdiction of, 36.

jurisdiction and duties of, 36.

of railways, App. 30.

**COMMITTEE,**

on petitions, constitution, duties, and practice of, App. 35, 46, 47, 62.

report of, App. 51, 65.

on standing orders, constitution, duties, and practice of, App. 43, 45, 62.

report of, App. *ib.*



**COMMITTEE—Continued.**

- of selection, constitution, &c, of, App. 46.
- on bill, constitution of, App. 47, 63.
- time of commencement of sitting of, *ib.*
- notice to be given to members of, *ib.*
- declaration to be signed by members of, *ib.*
- five members of to be a quorum, App. 47.
- time of sitting and adjournment of, *ib.*
- resolutions concerning practice of, App. 47, 63.
- duties of imposed by the standing orders, App. *ib.*
- requisites of report of, App. 51, 65.
- evidence receivable before, App. 49, 63, 95.
- practice of, as regulated by the usage of Parliament, App. 92,  
*et seq.*
- of lords, practice of, App. *ib.*
- of privy council for trade.—See **BOARD OF TRADE.**
- committee-men, liability of, App. 12.

**COMMON LANDS,**

- compensation for when held of a manor, 256.
- when not held of a manor, 257.

**COMPANY,**

- registration of, under joint stock companies' act.—See **REGISTRATION.**
- formation of, App. 1—13.
- internal regulation of before incorporation, App. 7, 13.  
after incorporation.—See **SHARES, SHAREHOLDERS, &c.**
- general powers, rights, and liabilities of railway companies, 7, *et seq.* 20, *et seq.* 195, *et seq.*, &c.

**COMPENSATION,**

- partly injured entitled to, for any damage done in pursuance of the act, 30.
- if lands omitted from schedule, the owner may nevertheless claim compensation, 30.
- but has the option of bringing his action, 31.
- how far claimable for consequential damages, 30, 31.
- for Temporary occupation of lands—See **TEMPORARY OCCUPATION**
- for purchase of lands, 201, *et seq.*
- in case of parties under disability, to be ascertained by valuation of a surveyor appointed by two justices, *ib.*
- and paid into the Bank, *ib.*
- where amount claimed does not exceed 50*l.* to be settled by two justices, 207.
- exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming, *ib.*
- method of proceeding for settling before justices, 208.
- before arbitrator. See **ARBITRATION.**
- mode of settling by jury. See **JURY, SHERIFF. &c.**
- when mandamus will be granted to assess, 213, 214.

**COMPENSATION**---*Continued.*

amount claimed recoverable with costs in action against the company on their neglect to summon a jury after notice, 230.  
 money, not exceeding 20*l.* to be paid to parties, 235.  
 from 20*l.* to 200*l.* to be paid into the Bank or to trustees, 234.  
 above 200*l.* to be deposited in the Bank, 232.  
 application of, *ib.*  
 order for application and investment of, 234.  
 where parties refuse to convey, or show title to be deposited, 237.  
 what amounts to such neglect or refusal, *ib.*  
 application of money so deposited, 240.  
 to tenant. See **TENANT**.

**COMPETING LINES,**

mode of proceeding of committee respecting, App. 98.

**COMPULSORY POWER OF TAKING LANDS**---See **LANDS**.

limit of time for, 271.

**COMPUTE,**

rule to, 136.

**CONDUITS**---See **WORKS**.**CONSOLIDATION,**

of shares into stock, 153.

**CONSTRUCTION,**

of Act of Parliament.—See **ACT OF PARLIAMENT**.

of railway, what provisions subject to, 6, *et seq.* 20, *et seq.*—See **WORKS**.

**CONTRACT**---See **AGREEMENT**.

power of company to contract with other companies, 87.

sums payable under, with persons not absolutely entitled, to be paid into the Bank, 235.

**CONVEYANCE,**

of shares, 126.

of lands, forms of, 245, 287.

on chief rent, 288.

costs of, 245.

taxation of costs of, *ib.*

of lands by parties under disability, 199.

**CONVICTION,**

form of by justices, 115, 119, 288.

**COPYHOLDS**---See **LANDS**.**COPIES,**

of plans, &c., to be evidence, 15.

**CORONERS,**

provisions applicable to sheriff to apply to, 215.

**CORPORATIONS,**

municipal not to sell without the consent of the treasury, 203.

**COSTS**---**ARBITRATION**, **CONVEYANCE**, **INQUISITION**, &c.

of payment of dividends.—See **DIVIDENDS**.

**COVENANTS,**

by company to stop at station for refreshment, 22.

implied by the word "grant," in conveyances by company, 275.

**COUNT.**---See **DECLARATION.**

**COUNTY.**---See **CLERK OF THE PEACE, PLANS, &c.**

**COURT OF CHANCERY,**

one-tenth part of the amount subscribed to be deposited with,  
previous to 15th of January, App. 41, 59.

principles on which it will interfere, 7, *et seq. et passim.*—See  
**INJUNCTION.**

**CROSSING,**

owners allowed to cross railway until accommodation works are  
made, 53.

**CULVERT.**—See **PIPES,** 34.

**CURVES,**

limit of deviations from, 18.

**CUTTINGS.**---See **WORKS.**

**D****DAMAGE,**

the company to do as little as possible, and make compensation  
for, 21.

for what kinds of a company are answerable, 28.

liable to action for wilful or negligent, *ib.*

or not done in pursuance of act, 30.

not liable for damage done under the act, 28.

case of engines frightening horses, *ib.*

to haystacks, 29.

when and how liable for consequential, 30.

not confined to *bodily* injury, 62.

company not to be liable for damage by unloading, removing, &c.,  
carriages improperly loaded or obstructing railway, 104.

by servants of owners of engines and carriages, *ib.*

where given by act to be ascertained by justices, if not otherwise  
provided for, 109.

payable by company to be recovered by distress against treasurer, *ib.*

future, contingent, perpetual, temporary, or recurring, 231.

**DANGEROUS GOODS.**—See **PENALTY.**

**DEBT,**

may be brought on inquisition for assessment of damages, 19.  
proof of in bankruptcy, 181.

**DECLARATION,**

when to be substituted for subscription contract, App. 21.

in action for calls, requisites of, 136.

need not contain a count for interest, 135.

forms of, in action for calls, Add. cxxxiii.

transmission of shares by, 131.

**DEED,**

of transfer of shares, 126.—See **SUBSCRIBERS' AGREEMENT**, and **PARLIAMENTARY CONTRACT**.

**DEFAULT,**

judgment by, 136.

**DEPOSIT ON SHARES,**

one-half per cent only allowed by the Joint Stock Company's Act before complete registration, App. 4.

two and a half per cent. required by the standing orders, App. 41, 59.

in what cases recoverable by a subscriber, App. 12.

**OF PLANS**, sections, and books of reference, the time and place of to be stated in notices, App. 37, 54.

with clerks of the peace or sheriffs' clerks, on or before the 30th of November, App. 39, 57.

time of deposit to be marked in writing thereon, *ib.*

with parish clerks, schoolmasters, town clerks, or post-masters, App. 40, 57.

in Private Bill Office, and office of the clerk of the Parliament, *ib.*

at the Board of Trade, on or before the 30th of November, App. 39, 57.

deposit of purchase money, provisions concerning, 232, *et seq.* 248, *et seq.*

**DESCENT,**

maximum for carrying roads under bridges, 52.

**DETENTION,**

of passengers practising frauds on the company, 95.

**DEVIATIONS,**

from datum line, 16, 17.

appeal to the Board of Trade against, 17.

from gradients, curves, &c. 18.

lateral, 19,

construction of clause concerning, 19, 20.

**DIFFERENCES,**

as to accommodation works to be settled by justices, 72.

as to weights, &c., provision concerning, 94.

**DIRECTORS,**

appointment and rotation of, 160.

power to vary the number of in general meeting, *ib.*

the election of, *ib.*

qualification of, 161.

what amounts to disqualification of, after appointment, *ib.*

supply of occasional vacancies in, 163.

powers of a company to be exercised by, *ib.*

powers not to be exercised by, 164.

meetings and proceedings of, *ib.*

committees of, and their powers, *ib.*

contracts by committee of, 166.

proceedings to be entered in a book, and to be evidence, 167.

**DIRECTORS**---*Continued.*

informalities in the appointment of, not to invalidate proceedings, 168.

what may be considered a board of directors, *de facto*, and cases on, *ib.*

liabilities of, 169, and App. 12.

**DISABILITY,**

parties under, enabled to sell and convey, 199.

to exercise other powers, 200.

compensation for lands conveyed by parties under, *ib.*

restraint on purchase from parties under, 202.

**DISPUTES,**

between connecting railways, to be decided by the Board of Trade, Add. 74.

as to amount of tolls chargeable to be settled by a justice, 94.—

See DIFFERENCE.

**DISSENTS**---See ASSENTS, DISSENTS, AND NEUTERS.**DISSOLUTION,**

of Railway Companies.—See WINDING UP.

**DISTRESS**---See DAMAGES, PENALTIES.**DIVIDENDS,**

provisions concerning, 175.

of purchase money invested in government or real securities, payment, of, 243.

**DRAINS**---See WORKS.**DRAINAGE,**

of land, 35—38.

**DUBLIN GAZETTE**---See NEWSPAPER.**E.****EDINBURGH GAZETTE**---See NEWSPAPER.**EJECTMENT,**

in action of, by company against tenant, proceedings will not be stayed until payment of compensation money, 270.

the non-payment, however, of such compensation money, a good defence, *ib.*

**EMBANKMENTS AND CUTTINGS**---See WORKS.**ENDORSEMENT,**

of a deed of transfer, 128.

**ENGINES,**

provisions concerning, from 101 to 105.

to consume their own smoke, *ib.*

penalty for using engine which does not consume its smoke, *ib.*

examination, certificate of approval of, *ib.*

penalty for using improper, 102.

**ENGINEER,**

of company to superintend accommodation works, 74.

**ENGINEERING,**

difficulties, report of committee concerning, App. 51, 65.

**ENTRY,**

on land.—See **LAND**.

of names of shareholders in the register, 123.

of a memorial of deed of transfer in the “register of transfers,” 128.

**EQUITY.**—See **INJUNCTION**, **CHANCERY**.**ERRORS AND OMISSIONS IN PLANS,**

how corrected, 14.

**ESTIMATE,**

requisite of by standing orders. App. 40, 58.

**EVIDENCE,**

in action for calls, 136.

of proprietorship, 139.

of transmission of shares by marriage, will, &c., 132.

register of shareholders *primâ facie* evidence of proprietorship, 139.

what defects in will make it inadmissible, *ib*.

of forfeiture of shares, 141.

of authority for borrowing money, 146.

before examiner and committee on petition of compliance with standing orders, App. 43, 62.

receivable before committee of compliance with standing orders, consents, &c. in the case of Scotch and Irish bills, App. 44.

before committee on the bill, App. 95, *et seq*.

by competing lines against the bill, App. 95.

by landowners against the bill, App. *ib*.

parol evidence may be given of the finding of a jury where the inquisition has not been made a record of quarter sessions although directed to be made so by the act, 223.

**EXAMINER,**

of petitions appointed, App. 43.

**EXCAVATION,**

injunction granted to restrain when endangering houses 31.

**EXCHEQUER COURT IN SCOTLAND,**

deposit in, of one-tenth part of the amount subscribed, previous to the 15th of January, App. 41, 59.

**EXECUTION,**

against shareholders to the extent of their shares, if capital not paid up, 144.

**EXPENSE**,---See **ESTIMATE**.**EXTRA PAROCHIAL PLACES,**

notices to contain the names of, through which any work is proposed to be made, App. 37, 54.

## F.

**FENCES.**—See **WORKS**.

company to make, 66, 70.

**FIRE,**

caused by coals from engine, damage for, 28.

**FOOTWAYS,**

approaches and fences to, crossed on the level, 66.

**FOREIGN RAILWAYS,**

opinions of counsel, as to their being within, 7 & 8 Vic., c. 110,  
Add. 146.

**FORFEITURE,**

of shares, 141.

requisites to enforce, 142.

notice of, 120.

to be confirmed by a general meeting, 143.

evidence as to forfeited shares, 143.

sale of forfeited shares, 143.

no more to be sold than sufficient for payment of calls, 144.

on payment of calls before sale, forfeited shares to revert, 144.

## G.

**GARDEN,**

when passes with house, 220.

**GAZETTE.**—See **NEWSPAPER**.

**GENERAL MEETING.**—See **MEETING**.

**GOODS.**—See **CARRIERS**.

**GRADIENTS.**—See **PLANS AND WORKS**.

**GRANT,**

effect of the word in conveyances by company, 275.

**GROUPING.**—See **COMMITTEE**.

**GAUGES,**

resolution relating to, App. 102.

## H.

**HIGHWAY.**—See **ROAD, DAMAGE, &c.**

**HOUSE,**

parties not to be required to sell part of, 252.

**HOUSES.**—See **LANDS, OWNERS, LESSEES, OCCUPIERS, &c.**

## I.

**INCLINED PLANES.**—See **WORKS**.

**INCLINATION,**

existing of roads crossed or diverted need not be approved, 57.

mode of calculating, *ib.*

**INCONVENIENCE,**

to the company generally no excuse for non-compliance with the act, 61.

**INDEMNITY,**

on sale of shares, 127.

**INDICTMENT,**

will lie against a company in their corporate name, 24.

company may appear to, by attorney in Queen's Bench, 24.

mode of compelling their appearance to, at assizes or sessions, 24.

not considered so effectual a remedy as to supersede necessity for mandamus, 24.

for what act will lie against company, 28.

**INJUNCTION,**

principles on which injunctions are granted, 22.

where company manifestly exceeding their powers, Court of Chancery cannot refuse to interfere by, 22.

will be granted to stay irreparable mischief, where lawfulness of the proceeding questionable, 22.

sometimes granted as a stay of proceedings pending trial, *ib.*

requisites for obtaining, *ib.*

what variations through other men's lands will entitle landowners to, 23.

might be granted to restrain further proceedings, if it appeared that the company could not carry out their undertaking, 13.

party seeking must show that he is injured as an individual, and not merely as one of the public, 22.

granted to restrain company from making excavation endangering houses, 28.

from interfering with roads, 28, 60.

individuals suffering special damage may apply for, without the Attorney General being a party to the suit, 59.

to restrain company from entering upon lands until payment of the compensation money, 232.

**INJURY,**

to lands, what constitutes, 231.—See **DAMAGE.**

**INQUIRY.—See JURY, INQUISITION, &c.****INQUISITION,**

to be signed by the sheriff, 218.

to be deemed a record of Quarter Sessions and kept as such, 218.

copies to be evidence of, *ib.*

to be open to inspection, *ib.*

requisites of, 218, *et seq.*

should set out all circumstances requisite to confer jurisdiction on sheriff and jury, *ib.*

must show that notice has been given to the owners of land, *ib.*

that the warrant to the sheriff was consistent with such notice and the verdict with the warrant, 219.

must apportion compensation among plaintiffs claiming under separate interests, 218.



**INQUISITION**---*Continued.*

- the same strictness not required in, which applies generally to records of inferior courts, 219.
- what it need not state, and cases concerning, 219—223.
- under what circumstances liable to be quashed, notwithstanding clause taking away the certiorari, 220.
- debt may be maintained upon, 219.
- costs of, provisions concerning, 220, 225.
- to include the ordinary costs of trial, 224.
- expenses of surveyors *qua* witnesses, but not *qua* surveyors, *ib.*
- to be settled in case of difference by one of the Masters of the Court of Queen's Bench of England or Ireland, 224.
- how recoverable, *ib.*

**INSPECTION OF MINES**---See **MINES**.

- of books, 140, 151, 174.
- of subscribers' agreement, &c., 141.
- of special act, 117.
- of accounts, 174.

**INTEREST**,

- in company.—See **SHARES**, **SCRIP**, &c.
- count for, need not be inserted in declaration for calls, 135.
- to be paid on money borrowed by the company half-yearly, in preference to dividends, 149.
- on mortgage or bond, not transferable, except by deed, 149.
- to cease on expiration of notice to pay off mortgage or bond, 150.
- arrears of, when to be enforced by appointment of a receiver, *ib.*

**INTEREST IN LAND**---See **TENANT**.

- omitted to be purchased, provisions concerning, 271.

**ISSUE**,

- when will be directed by the Court of Chancery, 22.
- directed to decide claimant to purchase money deposited, 240.

**J.****JOINT SHAREHOLDERS**,

- votes of, 158.

**JOINT STOCK COMPANIES**.—See **COMPANIES**.**JUNCTION**,

- company will not be restrained from exercising the powers of their act, though a contemplated junction be frustrated, 12.

**JURISDICTION**,

- of the Court of Chancery, 22, *et seq.*
- of the Board of Trade, App. 21, *et seq.*—See **BOARD OF TRADE**,

**JURY**,

- compensation when to be settled by, 213, *et seq.*
- notice to be given by company before summoning, 213.
- warrant to the sheriff for summoning, *ib.*—See **WARRANT**.
- summoning of, 215.

**JURY—Continued.**

- impannelling of, 215.
- to view the place in controversy, 216.
- penalty on for making default, *ib.*
- to assess separate sums for the purchase of land, and for drainage, 217.
- effect of clause relative to, *ib.*—See **VERDICT**, **INQUISITION**, &c.
- special, to be summoned at request of either party, 225.
- provisions concerning, 226, 227.

**JUSTICES,**

- power of, to certify that lands have been omitted by mistake, 14.
- in petty sessions to consent to deviations, 16.
- power of to order other lands to be taken for temporary purposes, 45.
- enforcement of order of, *ib.*
- power of to summon landowners before them, 46.
- proceedings on application to justices to consent to level crossings of highways, 65.
- appeal against the determination of, *ib.*
- power to order approaches and fences to be made to highways crossed on the level, 66.
- to order repair of bridges, 68.
- difference as to accommodation works to be settled by, 73.
- power of a justice to settle disputes about tolls, 94.
- power of to appoint receivers, 151.
- to ascertain damage done to railway by servants of owners of engines and carriages, 104.
- method of proceeding before, in questions of damages, 110.
- compensation under £50, to be settled by two justices, 207.
- to nominate surveyors, 201, 227.

**L.****LADING,**

- account of, to be given to the toll collector, 93.

**LAND,**

- purchase of by agreement, provisions respecting, 199.
- not to be entered on previous to payment of price, 246.
- except to survey, &c., *ib.*
- or for the purpose of temporary possession, 40.
- or on deposit being made, and bond given, 247.
- notice to be given to owners, lessees, and occupiers of, intended to be taken, on or before the 15th of December, 40, S. O. Commons.
- notice to be given to owners, lessees, and occupiers of, intended to be taken, on or before the 31st of December, App. 58, S. O. Lords.
- notice to be given to owners and occupiers of, when any part of a work authorized by a former act is to be relinquished, *ib.*

**LAND---***Continued.*

- general construction of act giving compulsory powers to take, 7.
- See COMPENSATION, WORKS, &c.
- compulsory power of taking, 20.
- never to be implied, *ib.*
- limit of time for compulsory purchase of, 271.
- on default of owner to convey, to vest in company, on deposit being made and a deed poll executed, 236.
- on deposit being made and receipt given, to vest upon execution of deed poll, 239.
- application of money so deposited, *ib.*
- where more than one applicant, 240.
- owners of intersected lands may insist on sale.—See COPYHOLDS.
- when company may insist on purchase of intersected lands instead of making communications, 253.
- copyhold, conveyance of, 254—256.
- apportionment of rents of, 255.—See COMMON LANDS, MORTGAGE, &c.
- superfluous, sale of, 273---275.

**LANDOWNER,**

- rights of and remedies of, against railway companies, 7—13, 22, *et seq.*
- when entitled to complain of the unlawful construction of railway on lands of others, 23.

**LAND TAX,** 276.

**LATERAL DEVIATIONS.**—See DEVIATIONS.

**LEASE,**

- statute relating to leases and sales of railways, Add. 97.
- exercise of power to lease railway, 100.
- powers of lessees of railways, *ib.*
- application of money in respect of, 236.
- purchase of lands subject to, provisions concerning, 268, 271.—
- See RENT, TENANTS, COMPENSATION, &c.

**LEGATEE,**

- of shares, rights, and liabilities of, 132.

**LESSEES,**

- of railway, powers of, 100.—See OWNERS, LESSEES, AND OCCUPIERS.

**LEVELS,**

- limits of deviation from, 18.

**LIABILITY,**

- of directors and provisional committee, App. 12.
- of other persons attending meetings, giving orders, &c., *ib.*

**LIST,**

- of petitions, App. 43.
- of shareholders.—See REGISTER.
- of assents, dissents, and neuters, to be made, App. 40, 58.

**LOANS,**

- power to convert into capital, 152.

**LOCUS STANDI,**

before committee on bill, what constitutes, and decisions concerning, App. 92, *et seq.*

must be alleged in petition, App. 95.

**LONDON GAZETTE.**---See **NEWSPAPER.**

**LORDS,**

practice of committees of, App. 92, *et seq.*

**M.****MANDAMUS,**

ordinary mode of compelling the performance of act, 13.

general requisites of, 24.

for what defects held insufficient, 13.

will be granted to compel the exercise of the powers given to companies, *ib.*

not a good return to, that the thing ordered cannot be done without purchasing land which the company have no power to purchase, 25.

nor that a more commodious road has been set out than that interfered with, *ib.*

nor engineering difficulties nor expense, *ib.*

granted to summon a jury to assess damage for injury done to a mine by raising the level of a brook, 27.

to sink footpath to the level of carriage road, 53.

will generally contain express directions, and not merely order that works be constructed conformably to the act, *ib.*

granted to restore approaches to bridge, 54, 58.

to cause another road equally convenient, &c. to be set out, 58.

principles on which it will be granted, 24.

**MANOR,**

lord of, to enfranchise copyhold lands on payment or deposit of compensation money, 255.

**MAP.**---See **PLAN.**

**MARRIAGE,**

transmission of shares by, 132.

**MEMORIAL,**

to be made on plans, sections, &c., by clerk of the peace, App. 39, 57  
of transfer of shares to be entered in a book by the secretary of the company, 128.

**MEMBER OF PARLIAMENT,**

agreement of to withdraw his opposition to a railway bill in Parliament, not illegal, 9.

**MEETING,**

general, of shareholders, 155.

ordinary to be held half-yearly, *ib.*

business at ordinary, *ib.*

extraordinary may be convened by directors, *ib.*

**MEETING—Continued.**

- business at, 155.
- under what circumstances may be called by shareholders, 156.
- notice of, 157.
- quorum for general meeting, *ib.*
- forfeiture of shares to be confirmed by general meeting, 143.
- chairman, how chosen, business at, and adjournments, 157.
- votes of shareholders and manner of voting, 150.
- votes by proxy, *ib.*
- of joint shareholders, *ib.*
- of lunatics, minors, &c., 159.
- proof of particular majority required only where poll demanded, 159.

**MILE-STONES,**

- to be erected, 92.

**MILL-STREAM.—See RIVER.****MINES,**

- company not entitled to minerals, 77.
- power of company to insist on purchase of mines lying near the railway, 78.
- how mines near the railway may be worked if company do not choose to purchase, 78.
- mining communications across railway, 80.
- compensation for injury done to mines, *ib.*
- airways and other works made necessary by the railway, 81.
- power of company to enter and inspect the working of mines, *ib.*
- if mines improperly worked the company may require means to be adopted for the safety of the railway, 83.

**MORTGAGE,**

- by company, requisites of, 146.
- statutory form of, *ib.*
- not to preclude the company from receiving and applying calls, 147.
- mortgage of "all and singular the rates and tolls, and all the estate right, title, and interest of and in the same," does not pass any of company's lands, 146.
- form of mortgage deed, 192.
- form of transfer of, 193.
- purchase of lands subject to, provisions concerning, 260—265.

**MORTGAGEES,**

- rights of, 147.
- to have access to the account books of the company, 152.
- register of, 148.

**MUNICIPAL.—See CORPORATION.****N.****NEGLIGENCE.—See DAMAGE and ACTION, &c.****NEUTERS.---See ASSENTS, DISSENTS, AND NEUTERS.**

**NEWSPAPERS,**

notices to be published in local newspapers, in three successive weeks, in October and November, App. 16.

also in London, Edinburgh, and Dublin Gazette, *ib.*

**NOTICE,**

to take lands, 205.

requisites of, 42.

form of, Add. cxxxix.

effect of, 204.

company cannot withdraw from purchase of lands mentioned in, 214.

of action to a railway company, 86, 87.

required by the standing orders previous to the introduction of a railway bill, App. 36, 37.

of forfeiture of shares before declaration thereof, 142.

service of on company, 180.

on shareholders by company, *ib.*

on joint proprietors of shares, 181.

by advertisement of, *ib.*

authentication of, *ib.*

of petition, App. 36, 54.

of petition for additional provision, *ib.*

of second reading of bill, App. 46, 63.

of intention to summon a jury, 214.

of the time and place of the inquiry, 217.

of presentation of report of committee on bill, App. 51.

of the consideration of it, *ib.*

of the re-commitment of a bill, 52, 65.

of the third reading of a bill, App. *ib.*

of bill having been received from the Lords, App. 53.

**NUISANCE.**---See **INDICTMENT, COMPENSATION, &c.**

**O.****OBSTRUCTION,**

of supply of gas or water, penalty for, 35.

of construction of railway, penalty for, *ib.*

**OFFENDERS,**

against provisions of railway act, may be seized and detained by officers of company, 115.

**OFFICERS,**

of company, regulations concerning, 171.

summary remedies against, 172.

**OPPOSITION,**

effect of withdrawal of against the bill, 8, *et seq.*

on the part of a peer or member of Parliament, 9.

**OVERSEERS,**

of the poor in Ireland, interpretation clause concerning, 5.

**OWNER,**

interpretation clause respecting, 4.

meaning of word, 63.

owners, lessees, and occupiers of land, notice to be given to, App. 40, 58.

notice to be given to, before bill applied for, for relinquishment of an undertaking, App. *ib*.

party in possession to be deemed, 240.

interpretation of clause and cases concerning, 241, 242.

costs in cases of money deposited, 243.

**P.****PARISH CLERKS,}**

deposit of plans, sections, and books of reference with, App. 40, 57.

**PARISHES,**

notices to contain the names of, through which any work is to be made, App. 37, 54.

deposit of so much of the plans, sections, and books of reference as relate to, with parish clerks, schoolmasters, town clerks, or postmasters respectively, App. 39, 57.

**PARLIAMENTARY CONTRACT,**

requisites of, App. 40, 58.

standing orders concerning, *ib*.

time of entering into, *ib*.

copy to be lodged in the Private Bill Office, and receipt acknowledged on the petition, App. 43.

to be printed and delivered at the Vote Office, *ib*.

**PAROL EVIDENCE.---See EVIDENCE.****PARTNERS,**

persons associating to procure an Act of Parliament deemed partners, App. 12.

cannot sue each other without special agreement, *ib*.

**PARTY WALL,**

company held not liable for damage to party wall by taking down a house in pursuance of their act, 31.

**PASSENGER,**

penalty on, practising frauds on the company, 95.—See **CARRIERS**.

**PASSENGER RAILWAY,**

definition of, Add. 80.

**PEER,**

agreement with, in consideration of his withdrawing his opposition to a railway bill in Parliament, not illegal, 9.

**PENALTY,**

for obstructing constructions of railway, 35.

for obstructing supply of gas or water, 35.

**PENALTY**---*Continued.*

- for not substituting a road, 62.
- for failing to restore road, 64.
- for failing to construct screen, 67.
- for omitting to fasten gates, 75.
- for refusal to allow company to inspect mines, 82.
- for not giving an account of lading, 93.
- on passengers practising fraud on company, 95.
- for bringing dangerous goods on railway, 96.
- for not registering under the Joint Stock Companies' Act, App. 3.
- for using improper engines, 102.
- witnesses making default, 114.
- publication of, 110.
- for defacing boards used for such publication, 111.
- recoverable before two justices, if not otherwise provided for, 111.
- to be levied by distress, 112.
- imprisonment in default of distress for, *ib.*
- levying of distress for, 113.
- distress not unlawful for want of form, *ib.*
- application of penalties, *ib.*
- to be sued for within six months, 114.
- receiver of metropolitan police district to receive penalties incurred within his district, 116.
- on company failing to keep or deposit copies of special act, 118.
- on sheriff and jury making default, 216.
- on witnesses making default, 216.
- on company entering on lands before payment of purchase money, 250.

**PERJURY,**

- false evidence under consolidation or special act, amounts to, 117.

**PETITION,**

- requisites of, App. 42.
- when to be presented, *ib.*—See **COMMITTEE**.
- memorial against bill complaining of non-compliance with standing orders, App. 43.
- against bill, to committee on bill, App. 47.
- when to be presented, *ib.*
- to the Lords, requisite time of presentation of, App. 65.

**PETTY SESSIONS**---See **JUSTICES**.**PIERS**---See **WORKS**.**PIPES,**

- disturbance and relaying of, 33, 34.
- when culvert to be constructed over, 34.

**PLANES**---See **WORKS**.**POSSESSION,**

- temporary of land.—See **TEMPORARY**.

**PROTECTION WORKS**---See **ACCOMMODATION**.

- practice of Parliamentary committees generally, App. 92, *et seq.*



**PLANS, SECTIONS, AND BOOKS OF REFERENCE,**

works not to be proceeded with until plans authorized by Parliament have been deposited, 14.

to be taken custody of by clerks of the peace, parish clerks, and postmasters, 15.

requisites of plans, sections, and books of reference, by the standing orders, App. 37, 55.

to be deposited at the office of the clerk of the peace on or before the 30th of November, previous to application to Parliament, App. 39, 57.

to be deposited at the office of the Board of Trade on or before the 30th of November, *ib.*

with parish clerks in England, schoolmasters in Scotland, and postmasters in Ireland, App. 40, 57.

to be deposited in the Private Bill Office, *ib.*

and in the office of the clerk of the Parliaments, App. 58.

when at the Admiralty Office, App. 39.

what defects in can be taken advantage of before the committee on the bill, and under what circumstances, App. 50, 64.

**PLEADING,**

Declaration v. Railway Company, as carriers, not averring tender of carriage-money, 87.

in action for calls, not necessary to insert a count for interest, 135.

Declarations generally in actions for calls, 136.

in actions for calls, what pleas allowed, 137, 138.

forms of pleadings, Add. 133, 135.

**PLEAS,**

allowed and disallowed in actions for calls, 137, 138.

**POOR RATE,**

principles on which railways are rated, and cases concerning, 277, 279.

**POSTMASTERS IN IRELAND,**

deposit of plans, sections, and books of reference with, on or before the 31st of December, App. 17. See App. 40, 57.

**POWERS,**

of a railway company unknown to the common law, 7.

construction of, *ib.*

to construct works.—See **WORKS.**

to make calls.—See **CALLS.**

to borrow money, 145.

to borrow and reborrow money, *ib.*

to purchase lands by agreement, 199, *et seq.*

to purchase lands for extraordinary purposes, 202.

to sell and repurchase such lands, *ib.*

**PRACTICE,**

parliamentary, App. 92, *et seq.*

**PRECEPT.—See WARRANT.**

**PRE-EMPTION,**

- right of owners to, 274.
- right of, when to be claimed, *ib.*
- differences as to be settled by arbitration, *ib.*

**PRIVATE BILL OFFICE,**

- notices to be given in, App. 40.
- register to be kept in, and entries to be made in it, *ib.*
- deposit of petition in, App. 42.

**PROFITS,**

- purchaser of shares not entitled to until registered, 129.

**PROJECTORS.—See COMPANY.****PROOFS.—See EVIDENCE.****PROSPECTUS,**

- construction of, App. 7.
- construction and effect of, App. 7, 8.

**PROXY.—See MEETING.**

- form of, 194.

**PUBLIC,**

- railway act a contract with, 7.

**PURCHASE,**

- of lands by agreement, provision concerning, 199, *et seq.*
- of lands temporarily occupied may be compelled by owner, 48.

**PURCHASE MONEY,**

- when to be paid into the Bank, 232, *et seq.*
- application and investment of, 232, 233, 235, 238.
- costs of depositing, 243.
- of payment of dividends of, invested in government or real securities, 244.
- who entitled to claim purchase money deposited, and what necessary to support claim, 241.

**PURCHASER.—See VENDEE.****Q.****QUARTER SESSIONS.—See APPEAL.**

- power of to make orders, 116.

**R.****RAILWAY.—See ACT OF PARLIAMENT, WORKS, &c.****RATE.—See POOR RATE.****READINESS AND WILLINGNESS,**

- to pay carriage money, averment of, in declaration v. Railway Company, as carriers, 87.

**READING OF BILL.—See BILL.****RECEIPT,**

- form of banker's receipt in behalf of the company, App. 11.

**RECEIVERS,**

of metropolitan police district to receive penalties incurred within his district, 116.  
 appointment of, 151.

**RECOVERY.**—See **DAMAGE, PENALTY.**

**REFERENCE, BOOK OF.**—See **PLAN.**

**REGISTRATION,**

provision under the Joint Stock Company's Act, App. 1,  
*et seq.*  
 penalties for non-registration, App. 3.  
 powers obtained by, App. 4.  
 complete registration, App. 6, 7.

**REGISTER,**

of shareholders, requisites of, 124.  
 to be *prima facie* evidence of proprietors, 140.  
 what defects in will vitiate, 139, 140.  
 not to be inspected for the purpose of framing plea to action for calls, 140.  
 of transfers, requisites of, 128.

**REGISTRY,**

of mortgages and bonds, 148.

**REIMBURSEMENT,**

of shareholders who may have paid any sum beyond the amount due for calls, 145.

**REMEDIES,**

against railway companies.—See **DAMAGE, MANDAMUS, INJUNCTION, WORKS.**

**RENT,**

where vendor absolutely entitled, lands may be sold on chief rents, 201.  
 payment of to be charged on tolls, *ib.*  
 apportionment of, under different circumstances, 256, 268, 271.

**RENT-CHARGE,**

purchase of lands subject to, provisions concerning, 266.

**REPAIR,**

company bound to repair roads, 64, and bridges, 68.

**REPAYMENT,**

of money borrowed, 149.

**REPLY,**

right of before committee, 99.

**REPORT.**—See **BOARD OF TRADE, and COMMITTEE.**

**RESOLUTION,**

of House of Commons relating to Railway Bills, App. 67, 85.  
 of House of Lords, App. 85, 91.  
 of company, validity of, 130, 133.

**RESTORATION,**

of roads interfered with, provisions concerning, 63.

**REVERSIONER,**

when entitled to compensation, 31.

**RIGHTS,**

generally of railway companies, 7, *et seq.* 21, *et seq. et passim.*  
 of shareholders, 123, *et seq.* App. 11, 13.  
 of landowners, 22, 23, *et seq.*  
 of mortgagees, 147, 151.  
 of obligees, 147.

**RIVERS,**

alteration of the course of.---See **WORKS.**

**ROAD,**

prescribed mode of crossing, 74, 52.  
 agreement with trustees of, 8.  
 interference with generally.—See **WORKS.**

**RULE,**

to compute, will not be granted in case of judgment by default, in  
 action for calls, but a writ of inquiry must be had, 136.

**S.****SALE,**

of forfeited shares, 143.  
 of superfluous land, *ib.*

**SCIRE FACIAS,**

whether necessary to obtain execution against individual shareholders, 145.

**SCREEN,**

for roads, to be made if required by the Board of Trade, 67.

**SCRIP,**

form of scrip certificate, App. 13.  
 transferrability of, App. 6.

**SECTION,**

requisites of by the standing orders, App. 37, 55.---See **PLAN.**

**SECURITY,**

parties appealing to quarter sessions to give, 115.  
 from officers of company, 171.

**SELECTION,**

committee of, App. 47, 48.

**SERVICES,**

of certificates, notices, &c. of and to the Board of Trade, 70.  
 of notices on owners or occupiers of lands, 44.  
 of summonses, notices, writs, &c., on company, 108.  
 by company on shareholder, 180.

**SEVERAL PLEAS,** 136, 139.**SHARES,**

to be personal estate, 123.  
 what constitutes a title to, *ib.*  
 transferrability of, 124, 126, 130 ; App. 11, 12.  
 registry of, 124.  
 certificates of, 125.

**SHARES---Continued.**

- instrument of transfer to be deed duly stamped, 126.
- if executed by shareholder with blank left for the name of purchaser, void, 127.
- is a valid conveyance from a shareholder who has not been registered, 124
- contract for the sale of, 127.
- may be by parol, *ib.*
- right of the vendor to maintain an action on, *ib.*
- duties of the vendor, *ib.*
- cases with reference to the not transferring and not accepting of shares, 127, 128.
- transfers of shares to be registered, 128.
- interpretation of section concerning, 129.
- transfer not to be made till calls paid, 130.
- when call considered to be made, 130.
- transmission of shares otherwise than by transfer, 131, 132.
- new to be considered the same as original, 152.
- if old at premium, new to be offered to shareholders, *ib.*
- not accepted, to be disposed of by directors, *ib.*
- if not at a premium to be issued as company think fit, 153.
- form of certificate of, 191.
- form of transfer of, *ib.*

**SHAREHOLDERS,**

- rights and liabilities of before act, App. 11, 13.
- meetings of, 155 to 159.
- right manner of voting of, 158.
- voting of joint shareholders, 159.
- of incorporated joint stock companies, not disqualified from acting as directors of railway company, by reason of contracts of such company with railway company, 162.
- but not to vote on any question as to such contracts. *ib.*

**SHERIFF,**

- warrant for summoning jury to be addressed to, 213.
- required to summon jury, 215.
- to preside at trial, 216.
- to summon witnesses at the request in writing of either party, 216.
- penalty on for making default, *ib.*

**SHERIFF CLERKS IN SCOTLAND,**

- deposit of plans, sections, and books of reference with, on or before the 30th of November, App. 39. 57.

**SOLICITOR,**

- appointment of, under the Joint Stock Companies Act, App. 3.
- liability of to penalties for not making returns, *ib.*

**SPECIAL ACT,**

- copies of to be kept, and inspection of to be allowed, 117.

**SPECIFIC PERFORMANCE,**

- decreed of party contracting with railway company, 274.

**STAMP.**—See **TRANSFER, MORTGAGE, &c.**

**STANDING ORDERS.**---See **APPENDIX GENERALLY.**

made and adopted in the session of 1846, App. 36, 66.

copies of, so much of the standing orders of the Lords as relate to plans, sections, books of reference, &c. to be deposited with clerks of the peace, parish clerks, schoolmasters, and postmasters, App. 57.

**STATION.**---See **WORKS.**

lands for additional station, 50.

**STOCK,**

power to consolidate shares into, 153.

transference of, *ib.*

register of, 154.

dividends on, *ib.*

form of transfer of, 191.

**SUBSCRIBERS' AGREEMENT,**

requisites of, App. 40, 58.

**SUBSTITUTION OF ROADS.**—See **WORKS.**

**SUIT IN EQUITY.**—See **INJUNCTION, CHANCERY, &c.**

**SUMMARY APPLICATION,**

to the Court of Chancery, 38.

**SUNDAY,**

deposit of plans, &c. not to be made on, App. 57, 36.

**SURETIES,**

company to give, if required, before entering on lands for certain purposes, 47.

**SURVEYOR,**

of landowners to direct the working of land for getting materials, &c. 48.

compensation in case of parties under disability, to be ascertained by two surveyors, 201.

compensation to absent parties, to be determined by surveyor, to be appointed by two justices, 227.

declaration to be made by, *ib.*

appeal from to arbitration, 229.

## T.

**TEMPORARY USE OF LANDS,**

occupation of private roads within five hundred yards of railway, 39.

power to object that other roads should be taken, 40.

possession of land without previous payment of price, *ib.*

notice previous to, 42.

requisites of such notice, *ib.*

form of, Add. 130.

power of justices to order other lands to be taken, 46.

**TEMPORARY USE OF LANDS—Continued.**

purchase of lands temporarily occupied may be insisted on by owners, 48.

compensation for temporary occupation, 49.

**TENANCY,**

from year to year, effect of notice to quit by company, to determine between landlord and tenant, 204.

**TENDER.—See AMENDS.**

of charging for carrying goods, 87.

**TENANT,**

when entitled to compensation, 268.

from year to year, 204, 269.

at will, 269.

**TERM,**

compensation to tenant for,—See **TENANT**.

**TESTATOR,**

personal estate of, liable to calls made after his death with interest, 131.

**TIDAL LANDS,**

work situate on, App. 39.

**TITLE,**

to shares.—See **SHARES**.

to lands what constitutes acceptance of by company, 242.

**TOLLS,**

power to take, 83.

to vary, 89.

to be charged equally, *ib.*

cases concerning, 88, 90.

how to be calculated where railways amalgamated, 91.

railway to be free on payment of, *ib.*

list of to be exhibited on a board, *ib.*

to whom to be paid, 92.

on default of payment, of goods may be detained and sold, *ib.*

disputes as to the amount of, to be settled by a justice, 94.

payment of rents to be charged on, 201.

**TOLL COLLECTOR,**

liable for wrongful detentions of goods, 95.

**TORTS.—See ACTION.****TOWN CLERK,**

deposit of plans, &c. with, in Royal Burghs of Scotland. App. 40, 57.

**TRANSFER,**

of shares or stock, form of, 191.

of mortgage or bond, form of, 193.

**TRANSFERROR.—See VENDOR.****TRANSFERREE.—See VENDEE.****TRANSMISSION,**

of shares by other means than transfer to be authenticated by a declaration, 131.

proof of by marriage, will, &c., 132.

**TREASURER,**

of company liable to distress, 109.

**TREASURY,**

approbation of, required for the sale of lands, by municipal corporations, 203.

**TRESPASS.**---See **DAMAGE, ACTION.****TROVER,**

may be sometimes supported against carriers, 85.

**TRUSTS,**

company not bound to regard, 132.

**TRUSTEES OF A ROAD,**

agreement with by company in consideration of withdrawal of position sufficient to control provisions of the act, 7.

**TUNNELLING,**

to be marked on the section by a dotted line on the plan, App. 39, 56.

**TURNPIKE ROAD, IRELAND,**

interpretation clauses. respecting, 5.

what a turnpike road, 51

## U.

**UMPIRE.**---See **ARBITRATION.****UNDERTAKING,**

with Court of Chancery will not control powers given by act of Parliament, 12.

nor prevent parties petitioning for powers to do what they have undertaken not to do, 12.

**USE,**

of railway, provisions concerning, 97, *et seq.*

## V.

**VARIATION.**---See **DEVIATION.****VENDOR,**

of shares, duties of, 127.

under what circumstances may maintain an action against purchaser, *ib.*

time allowed to for completing his part of the contract, *ib.*

**VENDEE.**

of shares, duty of to tender a statutory form of conveyance, 127.

under what circumstances has a right of action against vendor for not executing it, *ib.*

time allowed to for completing his part of the contract, *ib.*

what amounts to a repudiation of bargain by, 128.



**VERDICT AND JUDGMENT.**---See **INQUISITION.**

**VIADUCT,**

how to be marked in plan and section, App. 39, 56.

**VOTE.**---See **MEETING.**

**VIEW.**---See **JURY.**

## W.

**WAREHOUSES,**

power to construct, 21.

**WARRANT,**

for summoning a jury to be addressed to the sheriff, 213.

must correspond with the notice to take lands, 214.

form of, Add. 136.

**WATERING PLACE,**

for cattle to be made by company, 72.

**WAY,**

party suffering from injury to right of, to recover in action on the case, 62.

**WAYS.**---See **WORKS.**

**WHARF,**

case where a railway passing between high and low water mark company were obliged to build a new wharf, 62.

**WIDTH,**

of railway, 19.

of bridges over roads, 56.

**WILFUL DAMAGE.**---See **DAMAGE.**

**WILL,**

transmission of shares by, 132.

**WINDING UP,**

the affairs of railway companies, App. 104, Add. 98.

**WITHDRAWAL OF OPPOSITION.**---See **AGREEMENT.**

**WITNESS,**

power of sheriff to summon, 216.

penalty on making default, *ib.*

**WORKS,**

execution of, what subject to, 20.

general powers to execute, 20, 21, *et seq.*

if manifestly unauthorized by act, Court of Chancery will interfere, 22.

also where likely to cause irreparable mischief, if their lawfulness be doubtful, *ib.*

necessary to a railway include those necessary to a station, 25.

necessity of, best judged by the company in ordinary cases, 26.

extent to which the courts will inquire into the necessity and *bond fide* nature of, 26, 27.---See **MANDAMUS**, **INJUNCTION**, **ENGINEERING**, &c.

below high water mark, not to be executed without consent of the Lords of the Admiralty, 31.

**WORKS.---***Continued.*

construction of bridges over roads, 51, 52, 53.

construction of bridges over railway, 54, 55, 56.

where road interfered with, another to be previously constructed, 57.

substituted road to be as convenient for passengers and carriages, *ib.*

penalties for not substituting, 62.

cases on this subject, 57 to 62.

when road to be restored, 63.

execution of by owners in default of company, 73, 74.

**Y.****YARD,**

when passes with house, 220.



